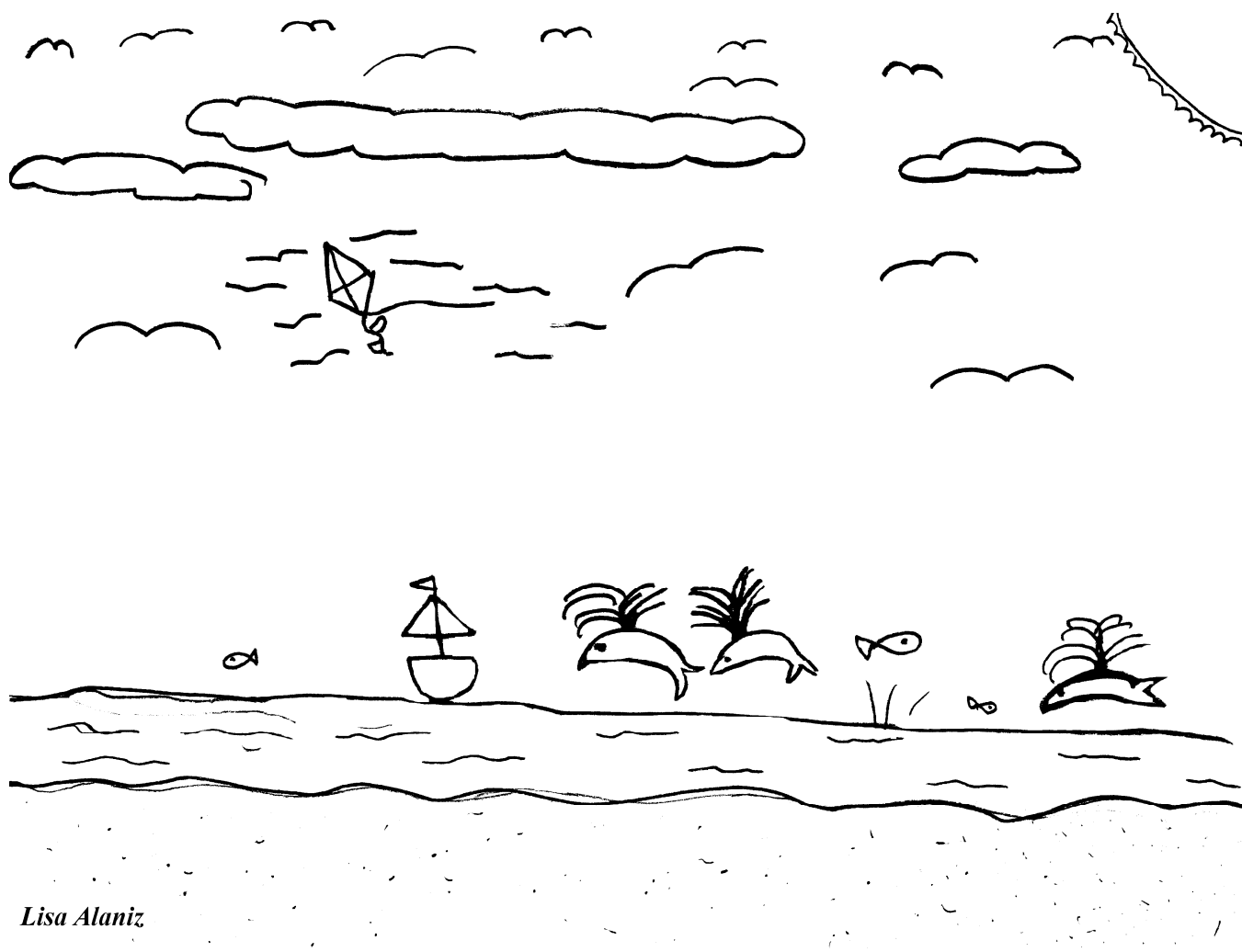

TEXAS REGISTER

Volume 33 Number 31

August 1, 2008

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School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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IN THIS ISSUE

GOVERNOR

Appointments	6049
Proclamation 41-3151	6049

ATTORNEY GENERAL

Request for Opinions	6051
Opinion	6051

TEXAS ETHICS COMMISSION

Advisory Opinion Request	6053
--------------------------------	------

PROPOSED RULES

TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

RULES OF PROFESSIONAL CONDUCT

22 TAC §573.51	6055
----------------------	------

PRACTICE AND PROCEDURE

22 TAC §575.27	6055
----------------------	------

TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

COMPENSATION PROCEDURE--CLAIMANTS

28 TAC §122.100	6056
-----------------------	------

DEATH BENEFITS--DEATH AND BURIAL BENEFITS

28 TAC §§132.6, 132.9, 132.11	6058
-------------------------------------	------

COMPTROLLER OF PUBLIC ACCOUNTS

TAX ADMINISTRATION

34 TAC §3.365	6060
34 TAC §3.1001	6063

TEXAS PROCUREMENT AND SUPPORT SERVICES

34 TAC §20.34	6068
---------------------	------

TEXAS DEPARTMENT OF PUBLIC SAFETY

SAFETY RESPONSIBILITY REGULATIONS

37 TAC §§25.1 - 25.8, 25.20, 25.21	6069
--	------

DEPARTMENT OF AGING AND DISABILITY SERVICES

MENTAL RETARDATION AUTHORITY RESPONSIBILITIES

40 TAC §§2.301 - 2.303, 2.305, 2.307, 2.309, 2.311, 2.313, 2.315	6076
40 TAC §§2.351 - 2.373	6083

PILOT PROGRAM TO INCREASE THE USE OF ADVANCE DIRECTIVES IN NURSING FACILITIES AND INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION

40 TAC §§16.1 - 16.4	6084
----------------------------	------

CONSUMER DIRECTED SERVICES OPTION

40 TAC §41.307	6086
40 TAC §41.407	6086

SERVICE RESPONSIBILITY OPTION

40 TAC §§43.1 - 43.4	6088
40 TAC §§43.11 - 43.19	6089
40 TAC §43.21, §43.22	6091
40 TAC §§43.31 - 43.33	6092
40 TAC §43.41, §43.42	6093
40 TAC §43.51	6094
40 TAC §43.61	6094
40 TAC §43.71	6094

CLIENT MANAGED PERSONAL ATTENDANT SERVICES

40 TAC §44.61	6095
---------------------	------

INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS

40 TAC §90.15, §90.19	6097
40 TAC §90.192	6098
40 TAC §90.236, §90.240	6099

LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

40 TAC §§92.1 - 92.6	6103
40 TAC §§92.11 - 92.20, 92.54	6107
40 TAC §92.551	6111
40 TAC §§92.2 - 92.4	6114
40 TAC §§92.10 - 92.23	6114
40 TAC §§92.551 - 92.595	6114
40 TAC §§92.601 - 92.616	6116

TEXAS DEPARTMENT OF TRANSPORTATION

VEHICLE TITLES AND REGISTRATION

43 TAC §17.40	6121
43 TAC §§17.40, 17.41, 17.51	6121

WITHDRAWN RULES

TEXAS MEDICAL BOARD

USE OF EXPERTS

22 TAC §182.8	6127
---------------------	------

STANDING DELEGATION ORDERS

22 TAC §193.6	6127
---------------------	------

TEXAS STATE BOARD OF PLUMBING EXAMINERS

ADMINISTRATION	
22 TAC §361.1	6127
ENFORCEMENT	
22 TAC §367.1	6127
TEXAS COMMISSION ON FIRE PROTECTION	
FIRE FIGHTER SAFETY	
37 TAC §435.1	6127
ADOPTED RULES	
TEXAS FACILITIES COMMISSION	
EXECUTIVE ADMINISTRATION DIVISION	
1 TAC §§111.1 - 111.8	6129
ADMINISTRATION	
1 TAC §§111.1, §111.2	6130
1 TAC §§111.20 - 111.24	6130
1 TAC §§111.30 - 111.32	6130
1 TAC §§111.40, §111.41	6131
FACILITIES LEASING PROGRAM	
1 TAC §§115.1 - 115.3, 115.8, 115.10, 115.13	6131
STATE BOARD OF DENTAL EXAMINERS	
CONTINUING EDUCATION	
22 TAC §104.1	6132
TEXAS MEDICAL BOARD	
GENERAL PROVISIONS	
22 TAC §161.6, §161.8	6132
LICENSURE	
22 TAC §§163.4 - 163.6, 163.10, 163.11	6133
PHYSICIAN REGISTRATION	
22 TAC §§166.1, 166.2, 166.5, 166.6	6133
AUTHORITY OF PHYSICIANS TO SUPPLY DRUGS	
22 TAC §169.2	6134
POSTGRADUATE TRAINING PERMITS	
22 TAC §§171.3 - 171.6	6134
22 TAC §171.5	6134
TEMPORARY AND LIMITED LICENSES	
22 TAC §172.1, §172.2	6135
22 TAC §§172.3, 172.6, 172.8	6135
22 TAC §172.13	6135
SURGICAL ASSISTANTS	
22 TAC §§184.1, 184.2, 184.4 - 184.6, 184.8, 184.9, 184.18 - 184.20, 184.26	6135

STANDING DELEGATION ORDERS	
22 TAC §§193.1, 193.2, 193.4, 193.7 - 193.10	6137
22 TAC §193.11	6137
TEXAS DEPARTMENT OF INSURANCE	
AGENTS' LICENSING	
28 TAC §§19.1001, 19.1002, 19.1005 - 19.1007, 19.1009, 19.1011, 19.1012, 19.1014, 19.1022, 19.1023	6138
TEXAS BOND REVIEW BOARD	
BOND REVIEW BOARD	
34 TAC §181.2, §181.9	6146
TEXAS DEPARTMENT OF PUBLIC SAFETY	
ORGANIZATION AND ADMINISTRATION	
37 TAC §1.261	6146
37 TAC §1.261	6146
COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES	
37 TAC §4.37	6147
LICENSE TO CARRY HANDGUNS	
37 TAC §6.1, §6.2	6147
37 TAC §§6.3 - 6.5	6147
37 TAC §§6.11 - 6.21	6148
37 TAC §§6.11 - 6.15	6148
37 TAC §6.31, §6.32	6148
37 TAC §§6.51 - 6.54	6148
37 TAC §§6.61 - 6.63	6149
37 TAC §§6.71 - 6.74, 6.76, 6.77, 6.79 - 6.92	6149
37 TAC §§6.82 - 6.96	6149
37 TAC §§6.111 - 6.116	6149
PUBLIC SAFETY COMMUNICATIONS	
37 TAC §9.22	6150
37 TAC §9.32	6150
DEPARTMENT OF AGING AND DISABILITY SERVICES	
NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION	
40 TAC §19.101	6153
40 TAC §19.403	6159
40 TAC §19.701, §19.706	6161
40 TAC §19.2004	6161
RULE REVIEW	
Adopted Rule Reviews	

Texas Medical Board	6163	Correction of Error.....	6207
TABLES AND GRAPHICS		Texas Lottery Commission	
.....	6165	Instant Game Number 1068 "\$1,000,000 Gold Rush"	6207
IN ADDITION		Instant Game Number 1081 "King of Cash"	6213
Coastal Coordination Council		Instant Game Number 1083 "Best of 7's"	6217
Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program	6185	Instant Game Number 1099 "Texas Ranger Limited Edition Silver Series"	6221
Comptroller of Public Accounts		Instant Game Number 1103 "Bonus Cashword"	6226
Notice of Request for Proposals	6185	Instant Game Number 1108 "Diamonds & 7's"	6230
Texas Education Agency		Instant Game Number 1119 "\$250 Christmas Club"	6233
Request for Applications Concerning Public Senior College/University Open-Enrollment Charter Guidelines and Application.....	6186	Texas Parks and Wildlife Department	
Texas Commission on Environmental Quality		Notice of Availability - Final Damage Assessment and Restoration Plan	6237
Agreed Orders	6187	Texas Department of Public Safety	
Enforcement Orders	6189	Hazardous Materials Emergency Preparedness Grants	6238
Notice - Extension of Comment Period on the Proposed Amendments to 30 TAC Chapter 330	6194	Public Utility Commission of Texas	
Notice of District Petition	6194	Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority	6239
Notice of Water Rights Application	6195	Announcement of Application for State-Issued Certificate of Franchise Authority	6239
Notice of Water Quality Applications	6195	Notice of Application for Amendment to Service Provider Certificate of Operating Authority	6239
Texas Health and Human Services Commission		Notice of Application for Sale, Transfer, or Merger	6240
Correction of Error.....	6197	Notice of Application for Sale, Transfer, or Merger	6240
Notice of Intent to Renew Consultant Contract.....	6198	Notice of Workshop and Request for Comments on Strawman Rule for Establishing Telecommunications Service Quality Standards for Alternate Technologies used by a Provider of Last Resort	6240
Notice of Public Hearing on Proposed Medicaid Payment Rates..	6198	Public Notice of CCN Holders Filing Requirements in Order to Calculate the Weighted Statewide Average Composite Usage Sensitive Intrastate Switched Access Rates.....	6241
Notice of Public Hearing on Proposed Medicaid Payment Rates..	6199	Public Notice of Workshop on Retail Electric Provider Certification and Request for Comments	6241
Notice of Public Hearing on Proposed Medicaid Payment Rates..	6199	Stephen F. Austin State University	
Notice of Public Hearing on Proposed Medicaid Payment Rates..	6200	Notice of Consultant Contract Amendment	6242
Notice of Public Hearing on Proposed Medicaid Payment Rates..	6200	Texas Department of Transportation	
Notice of Public Hearing on Proposed Medicaid Payment Rates..	6201	Notice: Record of Decision	6242
Notice of Public Hearing on Proposed Medicaid Payment Rates..	6201	Public Notice - Aviation.....	6243
Texas Department of Housing and Community Affairs		University of Houston	
Single Family Mortgage Revenue Bonds (Program 71) and Single Family Mortgage Revenue Bonds Drawdown Program.....	6201	Consultant Contract Award Notice	6243
Texas Department of Insurance		The University of Texas System	
Company Licensing	6202	Notice of Intent to Seek Consultant Services	6243
Notice of Public Hearing 2008 Texas Title Insurance Biennial Hearing	6202		
Texas Department of Insurance, Division of Workers' Compensation			

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
<http://www.state.tx.us/>

...

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for July 16, 2008

Appointed to the Judicial Districts Board for a term to expire December 31, 2010, Craig Enoch of Austin (Judge Enoch is being reappointed).

Appointed to the Dental Hygiene Advisory Committee for a term to expire February 1, 2009, Regan Landreth of Austin (replacing Peggy Polito of Carrollton who is deceased).

Appointed to the Dental Hygiene Advisory Committee for a term to expire February 1, 2013, Norma Jean Sosa of Harlingen (Ms. Sosa is being reappointed).

Appointments for July 18, 2008

Appointed to the State Community Development Review Committee for a term to expire February 1, 2009, Jack Gorden of Lufkin (replacing Lori Berger of Flatonia whose term expired).

Appointed to the State Community Development Review Committee for a term to expire February 1, 2009, Lester Baker of Stanton (replacing Dot Stafford of Pecos whose term expired).

Rick Perry, Governor

TRD-200803759



Proclamation 41-3151

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the death of the Honorable George E. "Buddy" West has caused a vacancy to exist in the Texas House of Representatives District No. 81 which consists of Andrews, Ector, and Winkler Counties; and

WHEREAS, Article III, Section 13 of the Texas Constitution and Section 203.002 of the Texas Election Code require that a special election be ordered upon such vacancy; and

WHEREAS, Section 3.003 of the Texas Election Code, requires the election to be ordered by proclamation of the Governor;

NOW, THEREFORE, I, RICK PERRY, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special election to be held in District No. 81 on Tuesday, November 4, 2008, for the purpose of electing a State Representative for House District No. 81 to serve out the unexpired term of the Honorable George E. "Buddy" West.

Candidates who wish to have their names placed on the special election ballot must file their applications with the Secretary of State no later than 5:00 p.m. on August 29, 2008.

Early voting by personal appearance shall begin on October 20, 2008, in accordance with Section 85.001 of the Texas Election Code.

A copy of this order shall be mailed immediately to the County Judges of Andrews, Ector, and Winkler Counties; and all appropriate writs will be issued and all proper proceedings will be followed for the purpose that said election may be held to fill the vacancy in District No. 81 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 3rd day of July, 2008.

Rick Perry, Governor

Attested by: Phil Wilson, Secretary of State

TRD-200803773



THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

Request for Opinions

RQ-0725-GA

Requestor:

Mr. Robert Scott
Commissioner of Education
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

Re: Whether subsection 11.051(a-1), Education Code, alters the common law rule for determining the number of votes necessary for a school district board of trustees to act in its official capacity (RQ-0725-GA)

Briefs requested by August 18, 2008

RQ-0726-GA

Requestor:

Mr. Dewey E. Helmcamp, III, J.D.
Texas Board of Veterinary Medical Examiners
333 Guadalupe, Suite 3-810
Austin, Texas 78701-3942

Re: Whether a complaint filed against a licensed veterinarian is subject to disclosure to the licensee and/or the general public (RQ-0726-GA)

Briefs requested by August 18, 2008

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200803756
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: July 23, 2008

Opinion

Opinion No. GA-0647

Mr. James A. Cox, Jr., Chair
Texas Lottery Commission
Post Office Box 16630
Austin, Texas 78761-6630

Re: Constitutionality of Government Code section 467.025(a)(5), which provides that a Lottery Commission member "may not . . . directly or indirectly coerce, attempt to coerce, command, or advise a person to pay, lend, or contribute anything of value to another person for political purposes," and its applicability in specific circumstances (RQ-0668-GA)

S U M M A R Y

Depending on the particular facts, Government Code section 467.025(a)(5) could apply to prohibit a member of the Lottery Commission from inviting a person to a political fundraising event, authorizing the inclusion of the member's name as a sponsor or host of a political fundraising event, or soliciting a contribution to a candidate for a federal office. The applicability of the statute does not depend on the current status of the candidate as a state officeholder.

A court would not likely find section 467.025(a)(5) unconstitutional on its face, although a court could possibly conclude that it is unconstitutional as applied in particular circumstances.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200803757
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: July 23, 2008

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Request

AOR-544. The Texas Ethics Commission has been asked to consider whether a candidate for speaker of the Texas House of Representatives may expend campaign funds to employ the services of a professional fundraiser.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; and (9) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200803696
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: July 21, 2008

◆ ◆ ◆

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER F. RECORDS KEEPING

22 TAC §573.51

The Texas Board of Veterinary Medical Examiners proposes an amendment to §573.51, regarding rabies control.

The proposed amendment would allow a licensed veterinarian to use an electronic signature on rabies certificates. In addition, it would require any licensed veterinarian who wishes to delegate the use of an electronic signature pad to a non-licensed employee to do so under the licensed veterinarian's direct supervision.

Dewey E. Helmcamp III, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Helmcamp has also determined that the rule will have no local employment impact.

Mr. Helmcamp has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to allow licensed veterinarians to use electronic signature pads with the anticipated benefits of technological advances.

Mr. Helmcamp has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not apply to single businesses.

Mr. Helmcamp has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.51. Rabies Control.

(a) Only the vaccinating veterinarian shall issue official rabies vaccination certificates. Each certificate shall contain the information required by 25 TAC §169.29 adopted by the Department of State Health Services, including:

(1) - (6) (No change.)

(7) veterinarian's signature, or electronic signature, or signature stamp and license number. Use of a veterinarian's signature stamp, or electronic signature pad on a vaccination certificate by a non-licensed person shall be authorized only under the direct supervision of the vaccinating veterinarian.

(b) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 16, 2008.

TRD-200803620

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: August 31, 2008

For further information, please call: (512) 305-7563



CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.27

The Texas Board of Veterinary Medical Examiners proposes an amendment to §575.27, regarding the receipt of complaints by the Board.

The proposed amendment would add a requirement the Board would not investigate complaints after three years from the date the complainant knew or should of known of the potential violation. The requirement is currently in Board policy.

Dewey E. Helmcamp III, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Helmcamp has also determined that the rule will have no local employment impact.

Mr. Helmcamp has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to focus the Board's time and resources on complaints where the

memory of witnesses are potentially fresh and records are more likely to continue to be in existence to aid in the determination of a violation.

Mr. Helmcamp has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule continues what is the Board's current policy.

Mr. Helmcamp has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§575.27. *Complaints--Receipt.*

(a) Complaints against licensees.

(1) - (5) (No change.)

(6) The board shall not investigate complaints after three years from the date the complainant knew or should of known of the potential violation.

(b) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 16, 2008.

TRD-200803621

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: August 31, 2008

For further information, please call: (512) 305-7563



TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 122. COMPENSATION PROCEDURE--CLAIMANTS

SUBCHAPTER B. CLAIMS PROCEDURE FOR BENEFICIARIES OF INJURED EMPLOYEES

28 TAC §122.100

The Texas Department of Insurance, Division of Workers' Compensation (Division) proposes amendments to §122.100 of this title relating to Claim for Death Benefits. This proposal concerns the authority of the Commissioner of Workers' Compensation ("Commissioner") to extend the one year time period in which an eligible parent must file a claim for death benefits. This proposal also makes conforming changes to §122.100 of this title.

This proposal is necessary in order to implement amendments made to Labor Code §408.182 and §408.183 by House Bill (HB) 724, enacted by the 80th Legislature, Regular Session, effective September 1, 2007. The Division is also proposing elsewhere in this edition of the *Texas Register* amendments to §§132.6, 132.9, and 132.11 of this title relating to Eligibility of Other Surviving Dependents To Receive Death Benefits, Duration of Death Benefits for an Eligible Grandchild and any Other Eligible Dependents, and Distribution of Death Benefits, respectively which are also necessary in order to implement these legislative amendments.

HB 724 amended Labor Code §408.182 and §408.183 by adding "eligible parents" to the class of legal beneficiaries entitled to receive death benefits under the Texas Workers' Compensation Act. Labor Code §408.182(f)(4) defines "eligible parent" as the mother or the father of a deceased employee, including an adoptive parent or a stepparent, who receives burial benefits under Labor Code §408.186. A parent whose parental rights have been terminated is specifically excluded from the definition of "eligible parent." Labor Code §408.182(d-1) provides that if there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased, the death benefits shall be paid in equal shares to surviving eligible parents of the deceased. Labor Code §408.183(f-1) provides that an eligible parent who is not a surviving dependent of the deceased employee is entitled to receive death benefits until the earlier of the date the eligible parent dies or the date of the expiration of 104 weeks of death benefit payments. The payment of death benefits to an eligible parent(s) may not, according to Labor Code §408.182(d-1), exceed one payment per household and may not exceed 104 weeks.

Labor Code §408.182(d-2) provides that in order to be eligible to receive death benefits, an eligible parent must file a claim with the Division not later than the first anniversary of the date of the injured employee's death. This subsection further provides that a claim for death benefits must designate all eligible parents and necessary information for payment to the eligible parents. An insurance carrier will not be liable for payment to any eligible parent who is not designated on the claim. Finally, Labor Code §408.182(d-2) permits the Commissioner to extend the time period for filing a claim for death benefits by an eligible parent if the eligible parent submits proof satisfactory to the Commissioner of a compelling reason for the delay.

This proposal amends §122.100 of this title which sets out the procedures and requirements all legal beneficiaries must follow when filing a claim for death benefits with the Division. This rule will apply to eligible parents. Section 122.100 of this title among other things requires a legal beneficiary seeking death benefits to file the claim within one year of the employee's death. Section 122.100(e) of this title provides that failure to file the claim for death benefits within this time period will bar the claim. Section 122.100(e) of this title however provides exceptions to this rule. Section 122.100(e)(1) and (2) of this title provides that the failure to file the claim within the one year time period will not bar the

claim if the legal beneficiary is a minor or otherwise legally incompetent, or good cause exists for failure to file the claim in a timely manner. This proposal adds to §122.100(e) of this title the exception for eligible parents set out in Labor Code §408.182(d-2). First, this proposal provides that the good cause exception applies to legal beneficiaries other than eligible parents. The good cause exception will not apply to an eligible parent because it is a lesser standard for extending the filing deadline than the standard prescribed by Labor Code §408.182(d-2). Second, this proposal provides that an eligible parent's failure to file a claim for death benefits within the one year time period does not bar the claim in cases where the eligible parent submits proof satisfactory to the Commissioner of a compelling reason for the delay.

As stated above, Labor Code §408.182(d-2) requires a claim for death benefits to designate all eligible parents. An insurance carrier will not be liable for payment to any eligible parent who is not designated on the claim. Current §122.100(d) of this title requires each beneficiary to file a separate claim for death benefits, unless the claim expressly includes or is made on behalf of another person. An eligible parent who is designated on a claim for death benefits filed by another eligible parent is considered expressly included under §122.100(d) of this title.

This proposal also replaces all references in §122.100 of this title to the "commission" with references to the "Division" due to the legislative changes made by HB 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005, in abolishing the Texas Workers' Compensation Commission and transferring the powers and duties of that former agency to the Division of Workers' Compensation of the Texas Department of Insurance.

Brent Hatch, Policy Advisor, has determined that for each year of the first five years the proposed amendments are in effect there will be no fiscal impact on state or local government as a result of enforcing or administering these proposed amendments. Mr. Hatch has also determined that there will be no measurable effect on local employment or the local economy as a result of enforcing or administering these proposed amendments.

Mr. Hatch has determined that for each year of the first five years the proposed amendments will be in effect the anticipated public benefit will be the incorporation into the Division's rules governing death benefits the legislative provisions governing the Commissioner's authority to extend the time period in which an eligible parent may file a claim for death benefits. Incorporating this legislative amendment into §122.100 of this title will provide eligible parents with clear notice of the legal standard an eligible parent must meet in order to extend the time period for filing a claim for death benefits. The proposed conforming amendments will benefit the public by providing the public with notice as to the proper state agency that administers the laws and rules governing death benefits. Mr. Hatch has determined that for each year of the first five years the proposed amendments are in effect there will be some costs imposed upon eligible parents that are associated with submitting proof satisfactory to the Commissioner of a compelling reason for the delay in filing a claim for death benefits. These costs will be the costs associated with preparing and submitting correspondence to the Commissioner requesting an extension of time to file the claim for death benefits together with any evidence relevant to establishing a compelling reason for the delay in filing the claim. Any cost that is associated with submitting this request for an extension and supporting proof to the Commissioner is a result of the legislative enactment of HB 724 and not a result of these proposed amendments.

This proposed amendment does not impose costs upon carriers, health care providers, or employers because this proposed amendment does not impose requirements upon those entities. The proposed conforming amendments replacing "commission" with "Division" do not impose costs upon any person or entity.

As required by Government Code §2006.002(c), the Division has determined that these proposed amendments will not have an adverse economic effect on small or micro-businesses. The Division's analysis of any possible costs for compliance with these proposed amendments that are detailed in the Public Benefit/Cost Note section of this proposal is also applicable to small and micro-businesses. Because these proposed amendments will not have an adverse economic effect on small or micro-businesses, Government Code §2006.002(c) does not require an economic impact statement or regulatory flexibility analysis.

The Division has determined that no private real property interests are affected by these proposed amendments and that these proposed amendments do not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

To be considered, written comments on the proposed amendments must be submitted no later than 5:00 p.m. on September 2, 2008. Comments may be submitted via the Internet through the Division's Internet website at <http://www.tdi.state.tx.us/wc/rules/proposedrules/toc.html> or by mailing your comments to Victoria Ortega, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744.

Any request for a public hearing must be submitted separately to the Office of General Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas 78744 by 5:00 p.m. on September 2, 2008. If a hearing is held, written and oral comments presented at the hearing will be considered.

These proposed amendments are proposed under Labor Code §§402.00111, 402.061, 408.181, 408.182, and 408.183.

Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under Labor Code Title 5. Labor Code §402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act. Labor Code §408.181 requires an insurance carrier to pay death benefits to the legal beneficiary if a compensable injury results in death. Labor Code §408.182 requires death benefits to be paid to surviving eligible parents of the deceased if there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased. Labor Code §408.183 provides that an eligible parent is entitled to receive death benefits until the earlier of the date the eligible parent dies or the date of the expiration of 104 weeks of death benefit payments.

The following sections are affected by this proposal: Labor Code §403.007; Labor Code Subchapter J, Chapter 408.

§122.100. Claim for Death Benefits.

(a) In order for a legal beneficiary, other than the subsequent injury fund, to receive the benefits available as a consequence of the

death of an employee which results from a compensable injury, a person shall file a written claim for compensation with the Division [commission] within one year after the date of the employee's death.

(b) The claim should be submitted to the Division [commission] either on paper or via electronic transmission, in the form, format, and manner prescribed by the Division [commission], and should include the following:

(1) - (3) (No change.)

(c) A claimant shall file with the Division [commission] a copy of the deceased employee's death certificate and any additional documentation or other evidence that establishes that the claimant is a legal beneficiary of the deceased employee.

(1) - (2) (No change.)

(d) (No change.)

(e) Failure to file a claim for death benefits within one year after the date of the employee's death shall bar the claim of a legal beneficiary, other than the subsequent injury fund, unless:

(1) that legal beneficiary is a minor or otherwise legally incompetent; ~~[or]~~

(2) for a legal beneficiary other than an eligible parent, good cause exists for failure to file the claim in a timely manner; or

(3) for a legal beneficiary who is an eligible parent, the parent submits proof satisfactory to the Commissioner of Workers' Compensation of a compelling reason for the delay in filing the claim for death benefits.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 21, 2008.

TRD-200803694

Stanton K. Strickland

Deputy Commissioner, Legal Services

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: August 31, 2008

For further information, please call: (512) 804-4715



CHAPTER 132. DEATH BENEFITS--DEATH AND BURIAL BENEFITS

28 TAC §§132.6, 132.9, 132.11

The Texas Department of Insurance, Division of Workers' Compensation (Division) proposes amendments to §§132.6, 132.9, and 132.11 of this title (relating to Eligibility of Other Surviving Dependents To Receive Death Benefits, Duration of Death Benefits for an Eligible Grandchild and any Other Eligible Dependents, and Distribution of Death Benefits, respectively). These proposed amendments concern an eligible parent's entitlement to death benefits under the Texas Workers' Compensation Act and the duration and distribution of those death benefits.

These proposed amendments are necessary in order to implement amendments made to Labor Code §408.182 and §408.183 by House Bill (HB) 724, enacted by the 80th Legislature, Regular Session, effective September 1, 2007. These legislative amendments add "eligible parents" to the class of legal beneficiaries entitled to receive death benefits under the

Texas Workers' Compensation Act. Labor Code §408.182(f)(4) defines "eligible parent" to mean the mother or the father of a deceased employee, including an adoptive parent or a stepparent, who receives burial benefits under Labor Code §408.186. A parent whose parental rights have been terminated is specifically excluded from the definition of "eligible parent." Labor Code §408.182(d-1) provides that if there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased, the death benefits shall be paid in equal shares to surviving eligible parents of the deceased. Labor Code §408.183(f-1) provides that an eligible parent who is not a surviving dependent of the deceased employee is entitled to receive death benefits until the earlier of the date the eligible parent dies or the date of the expiration of 104 weeks of death benefit payments. The payment of death benefits to an eligible parent(s) may not, according to Labor Code §408.182(d-1), exceed one payment per household and may not exceed 104 weeks.

Labor Code §408.182(d-2) provides that in order to be eligible to receive death benefits, an eligible parent must file a claim with the Division not later than the first anniversary of the date of the injured employee's death. This subsection further provides that a claim for death benefits must designate all eligible parents and necessary information for payment to the eligible parents. An insurance carrier will not be liable for payment to any eligible parent who is not designated on the claim. Finally, Labor Code §408.182(d-2) permits the Commissioner of Workers' Compensation ("Commissioner") to extend the time period for filing a claim for death benefits by an eligible parent if the eligible parent submits proof satisfactory to the Commissioner of a compelling reason for the delay.

Section 122.100 of this title relating to Claim for Death Benefits sets out the procedures and requirements a legal beneficiary must follow when filing a claim for death benefits with the Division. It prescribes the manner in which a claim for death benefits should be submitted to the Division and sets out the information that should be included with the claim. This rule also requires a claim for death benefits to be filed within one year of the date of the employee's death. Section 122.100 of this title applies to all legal beneficiaries applying for death benefits and will apply to eligible parents. The Division is proposing elsewhere in this edition of the *Texas Register* amendments to §122.100 of this title that concern the Commissioner's authority to extend the one year time period in which an eligible parent must file a claim for death benefits.

The proposed amendments to §§132.6, 132.9, and 132.11 of this title incorporate "eligible parents" into Chapter 132 of this title relating to Death Benefits--Death and Burial Benefits. These proposed amendments also specify other requirements that apply exclusively to an eligible parent seeking death benefits.

The proposed amendment to §132.6 of this title incorporates into that rule the requirements an eligible parent must meet in order to be entitled to death benefits under the Texas Workers' Compensation Act. This proposed amendment also amends the title of this rule to reflect this incorporation. This proposed amendment defines "eligible parent" to mean the mother or the father of a deceased employee, including an adoptive parent or a stepparent, who receives burial benefits under §132.13 of this title relating to Burial Benefits. This proposed amendment excludes from the definition of "eligible parent" a parent whose parental rights have been terminated. This proposed amendment pro-

vides that an eligible parent is entitled to death benefits only if there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased. This proposed amendment further provides that an eligible parent submitting a claim for death benefits must provide proof of the relationship to the deceased. This proof shall consist of certified copies of applicable birth certificates, decrees of adoption, or proof of marriage. If this evidence does not exist, baptismal records, court orders establishing paternity, voluntary admissions of paternity, or affidavits of persons who have personal knowledge of the relationship to the deceased qualify as sufficient proof of relationship. This proposed amendment also requires the eligible parent to designate all eligible parents on the claim for death benefits. An insurance carrier will not be liable for payment to an eligible parent who is not designated on the claim for death benefits. Finally, the proposed amendment to §132.6 of this title requires an eligible parent to submit proof of receipt of burial benefits. This proof will not be required if the eligible parent files the claim for burial benefits with the insurance carrier at the same time the parent files the claim for death benefits with the Division or the eligible parent has filed a claim for burial benefits and that claim is still pending at the time the parent files the claim for death benefits. The parent will be permitted to file the claim for death benefits simultaneously with the claim for burial benefits or while the claim for burial benefits is pending with the insurance carrier because both claims must be filed within one year of the date of the employee's death.

The proposed amendment to §132.9 of this title sets forth the duration of death benefits to be paid to an eligible parent. It provides that death benefits are to be paid to the eligible parent until the earlier of the date of the eligible parent's death or the date of the expiration of 104 weeks of death benefit payments. This proposed amendment also amends the title of this section to reflect its applicability to eligible parents.

The proposed amendment to §132.11 provides that death benefits shall be paid in equal shares to surviving eligible parents if there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased. This proposed amendment also provides that the amount paid may not exceed one payment per household and may not exceed 104 weeks.

Brent Hatch, Policy Advisor, has determined that for each year of the first five years the proposed amendments are in effect there will be a reduction in the amount of death benefits paid into the subsequent injury fund from 364 weeks to 260 weeks in fatal injury cases where the only surviving legal beneficiary is an eligible parent(s). The fiscal note for HB 724 estimated the reduction in amount to the subsequent injury fund to be \$1,983,600 for fiscal year 2008, \$2,035,800 for fiscal year 2009, \$2,105,400 for fiscal year 2010, \$2,157,600 for fiscal year 2011, and \$2,209,800 for fiscal year 2012. This reduction is a result of the legislative enactment of HB 724 and not a result of these proposed amendments. Mr. Hatch has determined that for each year of the first five years the proposed amendments are in effect there will be no fiscal impact on local government as a result of enforcing or administering these proposed amendments. Mr. Hatch has also determined that there will be no measurable effect on local employment or the local economy as a result of enforcing or administering these proposed amendments.

Mr. Hatch has determined that for each year of the first five years the proposed amendments will be in effect the anticipated public benefit will be rules that will provide for the effective and efficient distribution of death benefits to eligible parents in accordance with HB 724's legislative mandates. Mr. Hatch has determined that for each year of the first five years the proposed amendments are in effect there will be some costs imposed upon eligible parents. These costs will be the costs associated with completing the claim form provided by the Division and providing the claim form with any required supporting documentation to the Division. There are no costs imposed upon insurance carriers as a result of these proposed amendments. HB 724 nor these proposed amendments increase the amount of death benefits an insurance carrier must pay as a result of an employee's compensable injury that results in death. HB 724 and these proposed amendments require an amount of death benefits that were paid to the subsequent injury fund in no beneficiary cases prior to the enactment of HB 724 to instead be paid to eligible parents. There are no costs imposed upon health care providers or employers by these proposed amendments because these proposed amendments do not impose requirements upon those entities.

As required by Government Code §2006.002(c), the Division has determined that these proposed amendments will not have an adverse economic effect on small or micro-businesses. The Division's analysis of any possible costs for compliance with these proposed amendments that are detailed in the Public Benefit/Cost Note section of this proposal is also applicable to small and micro-businesses. Because these proposed amendments will not have an adverse economic effect on small or micro-businesses, Government Code §2006.002(c) does not require an economic impact statement or regulatory flexibility analysis.

The Division has determined that no private real property interests are affected by these proposed amendments and that these proposed amendments do not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

To be considered, written comments on the proposed amendments must be submitted no later than 5:00 p.m. on September 2, 2008. Comments may be submitted via the Internet through the Division's Internet website at <http://www.tdi.state.tx.us/wc/rules/proposedrules/toc.html> or by mailing your comments to Victoria Ortega, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744.

Any request for a public hearing must be submitted separately to the Office of General Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas 78744 by 5:00 p.m. on September 2, 2008. If a hearing is held, written and oral comments presented at the hearing will be considered.

These proposed amendments are proposed under Labor Code §§402.00111, 402.061, 408.181, 408.182, and 408.183.

Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under Labor Code Title 5. Labor Code §402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act. Labor Code §408.181 requires an insurance carrier to

pay death benefits to the legal beneficiary if a compensable injury results in death. Labor Code §408.182 requires death benefits to be paid to surviving eligible parents of the deceased if there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased. Labor Code §408.183 provides that an eligible parent is entitled to receive death benefits until the earlier of the date the eligible parent dies or the date of the expiration of 104 weeks of death benefit payments.

The following sections are affected by this proposal: Labor Code §403.007; Labor Code Subchapter J, Chapter 408.

§132.6. Eligibility of Other Surviving Dependents and Eligible Parents To Receive Death Benefits.

(a) A parent, stepparent, sibling, or grandparent of a deceased employee who was dependent on the employee on the day of death is entitled to receive death benefits, only if there is no eligible spouse, child, or grandchild.

(b) A surviving eligible parent is entitled to receive death benefits only if there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased. The term "eligible parent" means the mother or the father of a deceased employee, including an adoptive parent or a stepparent, who receives burial benefits under §132.13 of this title (relating to Burial Benefits), but does not include a parent whose parental rights have been terminated.

(c) ~~[(b)]~~ A person claiming to be a ~~[an eligible]~~ beneficiary under subsection (a) or (b) of this section ~~[the Texas Workers' Compensation Act, §4.42(e)-]~~ is required to present proof of the relationship to the deceased employee to the carrier or along with the claim for death benefits. The evidence presented as proof of a relationship shall include certified copies of applicable birth certificates, or decrees of adoption, or proof of marriage. If these documents do not exist, the claimant shall submit other proof of relationship, such as baptismal records, court orders establishing paternity, voluntary admissions of paternity, or affidavits of persons who have personal knowledge of the relationship to the deceased employee. A person claiming to be a beneficiary under subsection (a) of this section [In addition, the claimant] shall submit evidence of dependence on the deceased employee as defined in §132.2 of this title (relating to Determination of Facts of Dependent Status). A person claiming to be a beneficiary under subsection (b) of this section shall designate all eligible parents on the claim for death benefits. An insurance carrier is not liable for payment to any eligible parent not designated on the claim for death benefits. A person claiming to be a beneficiary under subsection (b) of this section shall also submit proof of receipt of burial benefits unless the claim for burial benefits is filed with the insurance carrier pursuant to §132.13 of this title at the same time the claim for death benefits is filed with the Division or the claim for burial benefits has been filed with the insurance carrier but is still pending at the time the claim for death benefits is filed with the Division.

(d) ~~[(e)]~~ The term "sibling" means a brother or sister who shares at least one parent, through birth or adoption, with the deceased employee.

§132.9. Duration of Death Benefits for an Eligible Grandchild, Eligible Dependent, and Eligible Parent [and any Other Eligible Dependents].

(a) - (c) (No change.)

(d) An eligible parent who is entitled to receive death benefits shall receive benefits until the earlier of:

(1) the date the eligible parent dies; or

(2) the date of the expiration of 104 weeks of death benefit payments.

§132.11. Distribution of Death Benefits.

(a) - (c) (No change.)

(d) If there is no eligible spouse, child, or grandchild, the death benefits shall be paid in equal shares to any surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased [other eligible beneficiaries]. The amount to be paid to each surviving dependent shall be calculated by dividing the weekly death benefit by the number of surviving dependents [eligible beneficiaries].

(e) If there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased, the death benefits shall be paid in equal shares to surviving eligible parents. The amount paid may not exceed one payment per household and may not exceed 104 weeks.

(f) ~~[(e)]~~ If the deceased employee has no legal beneficiaries as defined by the rules and the Texas Workers' Compensation Act, the death benefits shall be paid to the subsequent injury fund, as set out in §132.10 of this title (relating to Payment of Death Benefits to the Subsequent Injury Fund).

(g) ~~[(f)]~~ The term "per stirpes" means that the grandchildren shall be entitled to share in only the amount of benefits that the parent of those grandchildren would have received had the parent been alive or otherwise eligible to receive death benefits.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 21, 2008.

TRD-200803695

Stanton K. Strickland

Deputy Commissioner, Legal Services

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: August 31, 2008

For further information, please call: (512) 804-4715



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.365

The Comptroller of Public Accounts proposes an amendment to §3.365, concerning sales of clothing and footwear during a three-day period in August. This rule is being amended pursuant to House Bill 3314, 80th Legislature, 2007, which changed the timing of the three-day exemption period and expanded the exemption to include backpacks purchased for use by public elementary or secondary school students. The title of the existing rule has been amended to reflect the expansion of the exemption to an item other than clothing and footwear. Subsection (a)

of the rule has been amended to provide the definition of "school backpack" and to add a generic term, "eligible item," that encompasses any item that is exempt from sales tax during the exemption period under this section. Subsection (b) has been amended to change the beginning of the three-day exemption period from the first Friday in August to the third Friday of the month. Subsection (c) of the rule is amended to exclude from the exemption backpacks that are not purchased for use by elementary or secondary school students. Subsection (o) has been amended to provide that a retailer who sells more than 10 school backpacks to a customer at the same time must obtain an exemption certificate from the customer verifying that the backpacks are being purchased for use by elementary or secondary school students. Conforming changes are made throughout the rule.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the items that would be eligible for this sales and use tax exemption. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.326 and §151.327.

§3.365. Sales of Certain Items [Clothing and Footwear] During a Three-day Period in August.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Clothing or footwear--An article of apparel that the article manufacturer designs for wear on or about the human body. Except as provided under paragraph (3) of this subsection, for [For] the purposes of this section, the term does not include accessories, such as jewelry, handbags, purses, briefcases, luggage, wallets, watches, and similar items that are carried on or about the human body, without regard to whether the item is worn on the body in a manner that is characteristic of clothing.

(2) Eligible item--For the purposes of this section, an article of clothing or footwear or a school backpack that is eligible for the sales tax exemption established under Tax Code, §151.326 and §151.327, respectively.

(3) School backpack--A pack with straps that one wears on the back, including a backpack with wheels (provided it may also be worn on the back like a traditional backpack) or a messenger bag, that is purchased for use by a student in a public or private elementary or secondary school.

(b) Exempt sales.

(1) Sales or use tax is not due on the sale of an eligible item [article of clothing or footwear] if:

(A) the sales price of the eligible item [article] is less than \$100; and

(B) the sale takes place during the period that begins at 12:01 a.m. on the third [first] Friday in August and ends at 12:00 a.m. (midnight) of the following Sunday.

(2) The exemption applies to each eligible item [article of clothing or footwear] that sells for less than \$100, regardless of how many items are sold on the same invoice to a customer. For example, if a customer purchases two shirts for \$80 each, then both items qualify for the exemption, even though the customer's total purchase price (\$160) exceeds \$99.99.

(3) The exemption does not apply to the first \$99.99 of an otherwise eligible item [article of clothing or footwear] that sells for more than \$99.99. For example, if a customer purchases a pair of pants that costs \$110, then sales tax is due on the entire \$110.

(c) Taxable sales. The [This] exemption under this section does not apply to:

(1) any special clothing or footwear that the manufacturer primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which the manufacturer designed the article. For example, golf cleats and football pads are primarily designed for athletic activity or protective use and are not normally worn except when used for those purposes; therefore, they do not qualify for the exemption. However, tennis shoes, jogging suits, and swimsuits are commonly worn for purposes other than athletic activity and thus qualify for the exemption;

(2) accessories, such as jewelry, handbags, purses, briefcases, luggage, athletic bags, duffle bags, gym bags, computer bags, framed backpacks, umbrellas, wallets, watches, and similar items that are carried on or about the human body, without regard to whether the item is worn on the body in a manner that is characteristic of clothing;

(3) school backpacks that are not purchased for use by elementary or secondary school students;

(4) [{3}] the rental of clothing or footwear. For example, the [this] exemption under this section does not apply to the rental of formal wear, costumes, uniforms, diapers, or bowling shoes;

(5) [{4}] taxable services that are performed on the clothing or footwear, such as repair, remodeling, or maintenance services, and cleaning or laundry services. For example, sales tax is due on alterations to clothing, even though the alterations may be sold or invoiced, and the customer pays such invoice, at the same time as the clothing is being altered. If a customer purchases a pair of pants for \$90 and pays \$15 to have the pants cuffed, then the \$90 charge for the pants is exempt, but tax is due on the \$15 alterations charge; and

(6) [{5}] purchases of items that are used to make or repair eligible items [clothing or footwear], including fabric, thread, yarn, buttons, snaps, hooks, and zippers.

(d) Articles normally sold as a unit. Articles that are normally sold as a unit must continue to be sold in that manner; they cannot be priced separately and sold as individual items in order to obtain the exemption. For example, if a pair of shoes sells for \$150, then the pair cannot be split in order to sell each shoe for \$75 to qualify for the exemption. If a suit is normally priced at \$225 on a single price tag, the suit cannot be split into separate articles so that any of the components may be sold for less than \$100 in order to qualify for the exemption. However, components that are normally priced as separate articles may continue to be sold as separate articles and qualify for the exemption if the price of an article is less than \$100.

(e) Sales of sets containing both exempt and taxable items.

(1) When an eligible item is [exempt clothing or footwear is] sold together with taxable merchandise as a set or single unit, the full price is subject to sales tax unless the price of the eligible item [exempt clothing or footwear] is separately stated. For example, if a boxed gift set that consists of a French-cuff dress shirt, cufflinks, and a tie tack is sold for a single price of \$95, the full price of the boxed gift set is taxable because the cufflinks and tie tack are taxable and the sales price of the shirt is not separately stated.

(2) When an eligible item [exempt clothing] is sold in a set that also contains taxable merchandise as a free gift and no additional charge is made for the gift, the eligible item [exempt clothing] may qualify for the [this] exemption under this section. For example, a boxed set may contain a tie and a free tie tack. If the price of the set is the same as the price of the tie sold separately, the item that is being sold is the tie, which is exempt from tax if the tie is sold for less than \$100 during the exemption period. Note: When a retailer gives an item away free of charge, the retailer owes sales or use tax on the purchase price that the retailer paid for the item.

(f) Discounts and coupons.

(1) A retailer may offer discounts to reduce the sales price of an item. If the discount reduces the sales price of an item to \$99.99 or less, the item may qualify for the exemption under this section. For example, a customer buys a \$150 dress and a \$100 blouse from a retailer who offers a 10% discount. After application of the 10% discount, the final sales price of the dress is \$135, and the blouse is \$90. The dress is taxable (its price is over \$99.99), and the blouse is exempt (its price is less than \$100.00).

(2) When retailers accept coupons as a part of the sales price of any taxable item, the value of the coupon is excludable from the tax as a cash discount, regardless of whether the retailer is reimbursed for the amount that the coupon represents. Therefore, a coupon can be used to reduce the sales price of an item to \$99.99 or less in order to qualify for the exemption under this section. For example, if a customer purchases a pair of shoes priced at \$110 with a coupon worth \$20, the final sales price of the shoes is \$90, and the shoes qualify for the exemption.

(g) Buy one, get one free or for a reduced price. The total price of items that are advertised as "buy one, get one free," or "buy one, get one for a reduced price," cannot be averaged in order for both items to qualify for the exemption under this section. The following examples illustrate how such sales should be handled.

(1) A retailer advertises pants as "buy one, get one free." The first pair of pants is priced at \$120; the second pair of pants is free. Tax is due on \$120. Having advertised that the second pair is free, the store cannot register the charge for each pair of pants at \$60 in order for the items to qualify for the exemption. However, if the retailer advertises and sells the pants for 50% off, and sells each pair of \$120 pants for \$60, each pair of pants qualifies for the exemption. Note: When a retailer gives an item away free of charge, the retailer owes sales or use tax on the purchase price that the retailer paid for the item.

(2) A retailer advertises shoes as "buy one pair at the regular price, get a second pair for half price." The first pair of shoes is sold for \$100; the second pair is sold for \$50 (half price). Tax is due on the \$100 shoes, but not on the \$50 shoes. Having advertised that the second pair is half price, the store cannot ring up each pair of shoes for \$75 in order for the items to qualify for the exemption under this section. However, if the retailer advertises the shoes for 25% off, and

thereby sells each pair of \$100 shoes for \$75, then each pair of shoes qualifies for the exemption.

(h) Rebates. Rebates occur after the sale and do not affect the sales price of an item purchased. For example, a customer purchases a sweater for \$110 and receives a \$12 rebate from the manufacturer. The retailer must collect tax on the \$110 sales price of the sweater.

(i) Layaway sales. A layaway sale is a transaction in which merchandise is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the merchandise. An order is accepted for layaway by the retailer when the retailer removes the goods from normal inventory or clearly identifies the items as sold to the customer. The [A] sale of an eligible item [clothing] under a layaway plan [sale] qualifies for exemption when either:

(1) final payment on a layaway order is made by, and the merchandise is given to, the customer during the exemption period; or

(2) the customer selects the eligible item and the retailer accepts the order for the item during the exemption period, for immediate delivery upon full payment, even if delivery is made after the exemption period.

(j) Rain checks. Eligible items that customers purchase during the exemption period with use of a rain check will qualify for the exemption regardless of when the rain check was issued. However, issuance of a rain check during the exemption period will not qualify an eligible item for the exemption if the item is actually purchased after the exemption period.

(k) Exchanges.

(1) If a customer purchases an eligible item [of eligible clothing or footwear] during the exemption period, but later exchanges the item for an item of a different size, different color, or other feature, no additional tax is due even if the exchange is made after the exemption period.

(2) If a customer purchases an eligible item [of eligible clothing or footwear] during the exemption period, but after the exemption period has ended, the customer returns the item and receives credit on the purchase of a different item, the appropriate sales tax is due on the sale of the newly purchased item.

(3) If a customer purchases an eligible item [of eligible clothing or footwear] before the exemption period, but during the exemption period the customer returns the item and receives credit on the purchase of a different eligible item [of eligible clothing or footwear], no sales tax is due on the sale of the new item if the new item is purchased during the exemption period.

(4) Examples:

(A) A customer purchases a \$35 shirt during the exemption period. After the exemption period, the customer exchanges the shirt for the same shirt in a different size. Tax is not due on the \$35 price of the shirt.

(B) A customer purchases a \$35 shirt during the exemption period. After the exemption period, the customer exchanges the shirt for a \$35 jacket. Because the jacket was not purchased during the exemption period, tax is due on the \$35 price of the jacket.

(C) During the exemption period, a customer purchases a \$90 dress that qualifies for the exemption. Later, during the exemption period, the customer exchanges the \$90 dress for a \$150 dress. Tax is due on the \$150 dress. The \$90 credit from the returned item cannot be used to reduce the sales price of the \$150 item to \$60 for exemption purposes.

(D) During the exemption period, a customer purchases a \$60 dress that qualifies for the exemption. Later, during the exemption period, the customer exchanges the \$60 dress for a \$95 dress. Tax is not due on the \$95 dress because it was also purchased during the exemption period and otherwise meets the qualifications for the exemption.

(l) Returned merchandise. For a 30-day period after the temporary exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax shall be given unless the customer provides a receipt or invoice that shows tax was paid, or the retailer has sufficient documentation to show that tax was paid on the specific item. This 30-day period is set solely for the purpose of designating a time period during which the customer must provide documentation that shows that sales tax was paid on returned merchandise. The 30-day period is not intended to change a retailer's policy on the time period during which the retailer will accept returns.

(m) Mail, telephone, e-mail, and Internet orders and custom orders. Under the Texas sales tax law, a sale of tangible personal property occurs when a purchaser receives title to or possession of the property for consideration. Therefore, an eligible item [~~of eligible clothing or footwear~~] may qualify for this exemption if:

(1) the item is both delivered to and paid for by the customer during the exemption period; or

(2) the customer orders and pays for the item and the retailer accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. The retailer accepts an order when the retailer has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an "in date" stamp on a mail order, or assignment of an "order number" to a telephone order. An order is for immediate shipment when the customer does not request delayed shipment. An order is for immediate shipment notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the company.

(n) Shipping and handling charges.

(1) Shipping and handling charges are included as part of the sales price of an eligible item [~~the clothing or footwear~~], regardless of whether the charges are separately stated. Except as provided in paragraph (2) of this subsection, if multiple items are shipped on a single invoice, the shipping and handling charge must be proportionately allocated to each item ordered, and separately identified on the invoice, to determine if any items qualify for the exemption. The following examples illustrate the way [~~that~~] these charges should be handled.[-]

(A) A customer orders a jacket for \$95. The shipping charge to deliver the jacket to the customer is \$5.00. The sales price of the jacket is \$100. Tax is due on the full sales price.

(B) A customer orders a suit for \$285 and a shirt for \$95. The charge to deliver the items is \$15. The \$15 shipping charge must be proportionately and separately allocated between the items: $\$285 / \$380 = 75\%$; therefore, 75% of the \$15 shipping charge, or \$11.25, must be allocated to the suit, and separately identified on the invoice as such. The remaining 25% of the \$15 shipping charge, or \$3.75, must be allocated to the shirt, and separately identified on the invoice as such. The sales price of the shirt is \$95 plus \$3.75, which totals \$98.75; therefore, the shirt qualifies for the exemption.

(C) A customer orders a suit for \$285 and a shirt for \$95. The charge to deliver the items is \$20. The \$20 shipping charge must be proportionately and separately allocated between the items: $\$285 / \$380 = 75\%$; therefore, 75% of the \$20 shipping charge, or \$15, must be allocated to the suit, and separately identified on the invoice as

such. The remaining 25% of the \$20 shipping charge, or \$5.00, must be allocated to the shirt, and separately identified on the invoice as such. The sales price of the shirt is \$95 plus \$5.00, which totals \$100; because the sales price of the shirt exceeds \$99.99, the purchase of the shirt is taxable.

(2) If the shipping and handling charge is a flat rate per package and the amount charged is the same regardless of how many items are included in the package, for purposes of this exemption the total charge may be attributed to one of the items in the package rather than proportionately and separately allocated between the items. For example, a customer orders five shirts, with four priced at \$98 and one at \$85. The retailer charges \$10 for shipping and handling the order. The retailer would have charged the same amount for shipping and handling whether the customer ordered one shirt or five shirts. The retailer may choose to attribute the \$10 shipping and handling charge to the shirt that was sold for \$85 rather than allocate the charge proportionately and separately between the shirts. If the charge is attributed to the \$85 shirt, the sales price of that shirt is \$95, and all of the shirts will qualify for the exemption.

(o) Documenting exempt sales.

(1) Except as provided in paragraph (2) of this subsection, a [~~The~~] retailer is not required to obtain an exemption certificate on sales of eligible items during the exemption period; ~~however~~[- ~~However~~], the retailer's records should clearly identify the type of item sold, the date on which the item was sold, and the sales price of the item.

(2) A retailer who sells more than 10 backpacks to a customer at the same time must obtain an exemption certificate from the customer verifying that the backpacks are being purchased for use by elementary or secondary school students.

(p) Reporting exempt sales. No special reporting procedures are necessary to report exempt sales made during the exemption period. Sales should be reported as currently required by law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 15, 2008.

TRD-200803604

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: August 31, 2008

For further information, please call: (512) 475-0387



SUBCHAPTER HH. MIXED BEVERAGE TAX

34 TAC §3.1001

The Comptroller of Public Accounts proposes amendments to §3.1001, concerning mixed beverage gross receipts tax. The proposed amendments change the name of this section, make consistent definitions that apply to both mixed beverage gross receipts tax under this section and the taxability of gratuities as provided by §3.337 of this title and clarify the taxability of cover charges, door charges, entry fees or admission fees.

Related to gratuities, subsection (a)(3) amends the definition of mandatory gratuity charge, subsection (a)(6) amends the definition of permittee, and new subsections (a)(7), (8), (11), and (12) are added to define qualified employees, reasonable mandatory

gratuity charge, total direct compensation and voluntary gratuity. The amendment to subsection (c)(5) makes only that portion of a reasonable mandatory gratuity charge that is not distributed to qualified employees taxable instead of the entire amount of the mandatory gratuity charge. The amendment to subsection (c)(6) makes clear that the entire amount of mandatory gratuity charges when in excess of 20% is taxable. The amendments to subsections (f)(4) and (f)(5) make reference to voluntary and reasonable mandatory gratuity charges, which by amendment are more clearly defined. New subsection (i) summarizes the taxability of mandatory gratuity charges.

Related to the taxability of cover charges, door charges, entry fees or admission fees, the amendments to subsections (c)(3) and (l)(8) clarify that a cover charge, door charge, entry fee or admission fee is subject to mixed beverage gross receipts tax only when the collection of the charge or fee is in violation of the Texas Alcoholic Beverage Commission rules or regulations. Subsections (c)(4) and (f)(8) are deleted because an alternative method for calculating the mixed beverage gross receipts tax on cover charges is no longer necessary. The amendment to new subsection (c)(4) replaces the word 'promotional' with 'reduced'. The amendment to subsection (l)(8) deletes a reference to 16 TAC §45.103, and restates that a cover charge, door charge, entry fee or admission fee is subject to sales tax unless the fee or charge is in violation of a Texas Alcohol Beverage Commission rule or regulation.

New subsection (e) summarizes the tax responsibilities of non-profit organizations holding fundraising or special events.

The amendment to subsection (j) deletes a reference to Tax Code, §183.001 because mixed beverage permittees are defined in subsection (a) of this section. The amendment to subsection (f)(9) deletes a reference to August 28, 1995, the first date mixed beverage permittees could make a deduction for a bad debt. The amendment to subsection (g) clarifies the taxability of alcohol loss due to spillage or breakage. The amendment to subsection (h) clarifies the inventory records required for alcohol used in cooking.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by clarifying the taxability of purchases, charges and gratuities on the premises of a business permitted to sell mixed alcoholic beverages. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §183.021.

§3.1001. Mixed Beverage Gross Receipts[; Receipts Excluded From] Tax[; Records Required; and Information Required].

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Alcoholic beverage--Alcohol, or any beverage containing more than 0.5% of alcohol by volume, which is capable of use for beverage purposes, either alone or diluted.

(2) Complimentary alcoholic beverage--An alcoholic beverage served without any consideration paid to the permittee.

(3) Mandatory gratuity charge--Any amount required by the permittee in excess of the charge for the sale of alcoholic beverages [~~Gratuities~~--An amount given voluntarily by a customer or member for the sale or service of alcoholic beverages in addition to the charge for the alcoholic beverages or an amount that is mandatory based on a percentage or other amount established by the permittee in excess of the charge for the sale or service of the alcoholic beverages].

(4) Minibar--A closed container, cabinet, or other device in a hotel guestroom that contains alcoholic beverages for use by guests registered in the hotel.

(5) Mixed beverage--A serving of a beverage composed in whole or in part of an alcoholic beverage in a sealed or unsealed container of any legal size for consumption on the premises where served or sold by the holder of a mixed beverage permit, a private club registration permit, a private club exemption certificate permit, and any of the auxiliary permits held by the permittee [~~permit holders~~].

(6) Permittee--A person, agent, or the officer, director, manager or managing general partner of an entity that is the [~~Permittee~~--A] holder of a mixed beverage permit, a mixed beverage late hours permit, a mixed beverage permit holding a food and beverage certificate, a daily temporary mixed beverage permit, a private club registration permit, a private club exemption certificate permit, a private club late hours permit, a daily temporary private club permit, a private club registration permit holding a food and beverage certificate, or a caterer's permit issued by the Texas Alcoholic Beverage Commission [~~(TABC)~~].

(7) Qualified employees--Employees who customarily and regularly provide the service upon which a gratuity is based, including, but not limited to, waiters, waitresses, busboys, service bartenders, wine stewards, and maitres d'hotel. The term does not include janitorial help, chefs, cashiers, or dishwashers.

(8) Reasonable mandatory gratuity charge--Mandatory gratuity charges that do not exceed 20%.

(9) [(7)] Source record--A dated customer service check or ticket; a dated cash register receipt, if coded to reflect all required information; or the equivalent of a customer service check or cash register receipt in some other form subject to approval by the comptroller.

(10) [(8)] Temporary membership card--A card printed and sold to a private club by the Texas Alcoholic Beverage Commission [(TABC)]. The card is then sold by the private club to an individual and entitles that individual to all the privileges of membership in the private club for a period not to exceed three days. The card also entitles the holder to bring not more than three persons into the club as the holder's guests.

(11) Total direct compensation--Total salaries paid to qualified employees. The term does not include other benefits paid or incurred on an employee's behalf, such as health and life insurance, sick leave, or vacation time.

(12) Voluntary gratuity--A tip added to the bill at the suggestion of the purchaser or money given freely by the purchaser over

and above the price charged for the sale or service of alcoholic beverages.

(13) [(9)] Walked checks or tabs--An industry term that refers to the instance of a customer that on a particular business day consumes alcoholic beverages and leaves the permittee's premises without paying or providing the appropriate consideration for the alcoholic beverages.

(b) Mixed beverage gross receipts tax. A tax at the rate of 14% imposed on the gross receipts of a permittee received from the sale, preparation, or service of alcoholic beverages or from the sale, preparation, or service of ice or nonalcoholic beverages that are sold, prepared, or served for the purpose of being mixed with an alcoholic beverage and consumed on the premises of the permittee.

(1) The mixed beverage gross receipts tax is a tax on gross receipts and is not to be added to the charge for the sale or service of the alcoholic beverage and cannot be considered included in the gross receipts amount.

(2) Each permittee must file a monthly return due on the 20th day of the following month. If no sales or services of alcoholic beverages are made during a month, a report indicating that fact must be filed.

(c) Taxable mixed beverage receipts. The mixed beverage gross receipts tax applies to, but is not limited to, receipts for the following items:

(1) receipts from the sale or service of alcoholic beverages;

(2) receipts from the sale or service of nonalcoholic beverages that are mixed and consumed with alcoholic beverages on the permittee's premises;

(3) receipts from cover charges, door charges, entry fees, or admission fees only when the Texas Alcoholic Beverage Commission has determined that the collection of the cover charge or admission fee is in violation of the Texas Alcoholic Beverage Commission rules or regulations. The [are related to reduced prices for alcoholic beverages as described in 16 TAC §45.103 (relating to Regulations of "Happy Hour")]. If cover charges are determined to be related to reduced prices for alcoholic beverages, the tax base will be the entire receipts from the cover charge or admission fee plus the reduced sales or service prices received for the alcoholic beverages;

[(4) as an alternative to paragraph (3) of this subsection, a permittee may elect to report the services or sales of alcoholic beverages at the normal service or selling price and exclude the cover charges, door charges, entry fees, or admission fees from the tax base. The normal sales or service price is the price charged for the alcoholic beverage when no cover charge, door charge, entry fee, or admission fee is collected. When the permittee elects to use this option, the cover charges, door charges, entry fees, or admission fees will be subject to sales tax under §3.298 of this title (relating to Amusement Services);]

(4) [(5)] the normal selling price of alcoholic beverages served with meals with no separate charge. If the specific alcoholic beverage is being sold or served at a reduced [promotional] price at the same time as the meal, the tax base for the alcoholic beverage will be the reduced [promotional] price. This subsection refers to promotions usually promoted as "free drink(s) with a meal";

(5) [(6)] any portion of a reasonable mandatory gratuity charge that is not disbursed to qualified employees; [mandatory gratuities of 20% or less that are not entirely distributed to qualifying employees. "Qualifying employees" are employees such as, but not limited to, waitpersons, buspersons, bartenders, wine stewards, and maitre

d'hotel who customarily and regularly provide the services upon which the charge is based. Nonqualifying employees or recipients include, but are not limited to, owners, club managers with no direct involvement in the particular event, janitorial help, chefs, cashiers, and dishwashers.]

[(A) If compensation is made to nonqualifying employees or recipients, the entire portion of the gratuity attributable to the sale or service of alcoholic beverages is subject to the mixed beverage gross receipts tax.]

[(B) If the total direct compensation due all qualifying employees during each reporting period (month) equals or exceeds the total amount collected as mandatory gratuities and no compensation is paid nonqualifying employees, the mandatory gratuity is exempt from the mixed beverage gross receipts tax.]

(6) [(7) all] mandatory gratuity charges when in excess of 20%. If a mandatory charge exceeds 20% then the entire mandatory gratuity [gratuities that exceed 20% of the] charge is [for alcoholic beverages are] subject to [the] mixed beverage gross receipts tax regardless of how the gratuity is disbursed;

(7) [(8)] miscellaneous charges in conjunction with the sale or service of alcoholic beverages such as bar set-up fees, bartender fees, corkage fees, maitres d'hotel [maitre d'hotel] charges, etc., are subject to the mixed beverage gross receipts tax;

(8) [(9)] all sales or services of alcoholic beverages by caterers;

(9) [(10)] all sales or services of alcoholic beverages sold or served by the holder of a temporary permit listed in subsection (a)(6) of this section or by the holder of a beer and wine only temporary permit issued to a mixed beverage permittee [permit holder];

(10) [(11)] all sales of coupons, tokens, tickets, etc., that are redeemed or used in any manner to purchase or pay for the service of an alcoholic beverage; and

(11) [(12)] thefts of money or legal tender received from the sale or service of alcoholic beverages are not deductible from the mixed beverage tax base.

(d) Private clubs, special events, and functions. Mixed beverage gross receipts tax on alcoholic beverages served at special events or functions such as golf or tennis tournaments at private clubs, when a lump-sum charge entitles the member or guest to various items such as green fees, food, alcoholic beverages, golf cart rentals, etc., shall be computed by one of the following methods.

(1) The club shall maintain documentation that shows the normal cost to a member or guest for each of the items provided for the lump-sum charge. The permittee will then compute the percentage of the total of all the charges attributable to the sale or service of the alcoholic beverages. This percentage then will be applied to the actual lump-sum amount paid by the member or guest to derive the tax base for the mixed beverage gross receipts tax. For example, if the total of all the items would normally cost \$300 and the permittee estimates that the portion attributable to the sale or service of alcoholic beverages is \$30, then 10% of the actual lump-sum amount would be reported as subject to the mixed beverage gross receipts tax. If the amount paid by the member or guest is \$200, then \$20 would be the tax base. The documentation used by the permittee is subject to review by the comptroller's personnel and any amounts determined to be inaccurate or unreasonable may be adjusted.

(2) The permittee may choose to use the normal sales or service prices of the alcoholic beverages as the tax base for the mixed beverage gross receipts tax.

(e) Nonprofit organizations holding fundraising and other special events where 100% of the net profit of the event goes to the nonprofit organization. Nonprofit organizations with an IRS Section 501(c)(3), (4), (8), (10), or (19) status who are issued a temporary mixed beverage permit will determine the mixed beverage gross receipts tax base in the following situations:

(1) if tickets are sold to an event with an open bar, the nonprofit organization owes mixed beverage gross receipts tax on their cost of the alcoholic beverages purchased for the event;

(2) if tickets are sold to an event with an open bar and the alcoholic beverages are donated to the nonprofit organization, the nonprofit organization does not owe mixed beverage gross receipts tax or use tax as provided by Tax Code, Chapter 151, on the donated alcoholic beverages, but owes mixed beverage gross receipts tax on the cost of any alcoholic beverages purchased for the event;

(3) if an event is one with a cash or ticket bar (with or without an entry fee), the nonprofit organization owes mixed beverage gross receipts tax on the total receipts from the sale and service of alcoholic beverages;

(4) if an event is one with no entry fee and open bar, the nonprofit organizations does not owe mixed beverage gross receipts tax, but owes use tax as provided by Tax Code, Chapter 151, on the cost of any alcoholic beverages purchases for the event.

(f) ~~[(e)]~~ Items excluded from the mixed beverage gross receipts tax base.

(1) Complimentary alcoholic beverages served without any consideration paid to the permittee. Use tax as provided by ~~[the]~~ Tax Code, Chapter 151, is due on the taxable ingredients of the complimentary alcoholic beverages.

(2) Complimentary alcoholic beverages served during promotional periods such as happy hours at hotels or motels. If, however, there is an increase in guest room rates attributable to the promotional periods, the comptroller will have the option to tax either the increase in the room rate under ~~[the]~~ Tax Code, Chapter 156, or assess use tax on the taxable ingredients of the complimentary drinks. The comptroller will have the authority to use information such as the room rates at comparable hotels and motels in the area to determine if an increased rate is attributable to the promotional period alcoholic beverages.

(3) Complimentary alcoholic beverages served to holders of free drink cards or free drink tokens, for which no consideration was paid to the permittee.

(4) Voluntary ~~All voluntary~~ gratuities.

(5) Reasonable~~All~~ mandatory gratuity charges ~~[gratuities; not to exceed 20% of the charge for the alcoholic beverages, that are distributed to qualifying personnel as outlined in subsection (e)(6) and (e)(6)(B) of this section].~~

(6) Walked checks or tabs. These differ from bad debts in that no agreement exists to extend credit to the customer or guest.

(7) Receipts from cover charges, door charges, entry fees, or admission fees that are ~~[not related to reduced prices for alcoholic beverages and]~~ assumed for entertainment, food specials, and other purposes. Sales tax as provided by §3.298 of this title (relating to Amusement Services) is due on these receipts.

~~[(8) Cover charges collected when the permittee elects to use the reporting method described in subsection (e)(4) of this section.]~~

(8) ~~[(9)]~~ Bad debts. The unpaid portion of the gross receipts on sales or services ~~[made on or after August 28, 1995,]~~ that

have been charged off the books as a bad debt and that are deducted for federal tax purposes during the same or subsequent reporting period.

(g) ~~[(f)]~~ Alcohol loss[; sales tax not due]. No mixed beverage gross receipts ~~[Although use tax per the Tax Code, Chapter 151, is due on the taxable ingredients of complimentary drinks, no use]~~ tax is due on alcoholic beverages destroyed due to spillage or breakage ~~[or used in cooking].~~

(h) ~~[(g)]~~ Inventory for cooking. Alcoholic beverages used in cooking may be stored with regular bar stock or in a separate storage area. The withdrawal from inventory of alcoholic beverages used in cooking must be recorded at the time of withdrawal on a service check or other permanent record.

~~[(1) Inventory of alcoholic beverages used in cooking may be stored:]~~

~~[(A) with regular bar stock; or]~~

~~[(B) in a separate storage area.]~~

~~[(2) The withdrawal from inventory of alcoholic beverages used in cooking must be recorded at the time of withdrawal on a:]~~

~~[(A) service check; or]~~

~~[(B) other permanent record.]~~

(i) Mandatory gratuity charges.

(1) Reasonable mandatory gratuity charges are specifically excluded from the mixed beverage gross receipts tax base if they are:

(A) separated from the sales price of the alcoholic beverage served;

(B) identified as a tip or gratuity by any reasonable means, including such terms as service fee or service charge; and

(C) disbursed to qualified employees. Any portion of a reasonable mandatory gratuity charge that is retained by the employer is subject to mixed beverage gross receipts tax.

(2) Mandatory gratuity charges in excess of the 20%. If a mandatory charge exceeds 20% then the entire mandatory gratuity charge is subject to mixed beverage gross receipts tax regardless of how they are disbursed.

(j) ~~[(h)]~~ Record requirement. Records required by the comptroller for mixed beverage permittees[; as that term is defined in Tax Code, §183.001,] must be kept for a period of four years. Records must be made available upon request within a reasonable time for examination by the comptroller or authorized agents or employees. The records, in general, must reflect the total gross receipts from the sale or service of alcoholic beverages and those associated services that are subject to the gross receipts tax, as provided by subsections (c), ~~(d)~~ and (e) ~~[and (d)]~~ of this section. Records may be written, kept on microfilm, or stored on data processing equipment. Permittees must contact the Texas Alcoholic Beverage Commission [TABC] for information concerning Texas Alcoholic Beverage Commission [TABC] record keeping requirements.

(k) ~~[(i)]~~ Source records.

(1) The following information is required to be printed on a source record in a manner that makes such information clearly evident or by a system of symbols (codes) if such symbols and their meaning are printed on the source record or maintained on the licensed premises.

(A) Each individual serving of an alcoholic beverage and the price charged. When using service checks, it is permissible to make one entry on a service check for more than one individual

serving if all of the servings are of the same type (e.g., 3 Scotch & Water @ \$2.00 = \$6.00). If all of the servings are not of the same type, a separate entry must be made on the service check for each type of service (e.g., 3 Scotch & Water @ \$2.00 = \$6.00, 2 Rum & Coke @ \$2.00 = \$4.00). When using a cash register only, regardless of the type of service, each individual serving must be rung up separately. When using a combination of service checks and a cash register, it is not necessary to itemize each serving on the cash register tape if all the required information is shown on the service check.

(B) For an alcoholic beverage not served as an individual separate serving, the unit of the serving used and the price charged. When using service checks, units of servings that are more than an individual separate serving shall be recorded as such (e.g., 2 pitchers of beer @ \$3.25 = \$6.50, 1 pitcher of daiquiri @ \$6.00 = \$6.00). When using a cash register only, each unit of serving which is more than an individual separate serving must be rung up separately, with the price list identifying the unit of serving. When using a combination of service checks and a cash register, it is not necessary to itemize each serving on the cash register tape if all the required information is shown on the service check.

(C) Each separate serving or other unit shall be clearly identified as to the kind of drink (e.g., [i.e.], daiquiri, tequila sunrise) or class of beverage (e.g., beer, wine, whiskey) as the case may be. If a cash register does not have sufficient keys for the classification, the price list used for identifying the units of servings must also identify the kinds of servings.

(D) The date of the transaction. For this purpose the "date" begins as of 3:00 a.m. one day and continues until 3:00 a.m. the next day.

(E) Complimentary alcoholic beverages shall be recorded on service checks only. A check should be prepared for each individual or party served. The check should be prepared as if it was a normal sale and then clearly marked as being complimentary. The service checks should be grouped daily and filed with the daily summary showing the information on the summary as required by subsection (1) [(j)] of this section. A serving of an alcoholic beverage shall not be a complimentary alcoholic beverage if it is served under conditions which include, but are not limited to the following: the alcoholic beverage is served in connection with food or any other thing sold to the recipient, or if any entertainment or entry fee is charged. Any alcoholic beverage served under the above or similar conditions is subject to the gross receipts tax, computed on the basis of the normal charge for the sale or service of such alcoholic beverage.

(F) Mandatory gratuity charges [gratuities] that exceed 20% of the charge for alcoholic beverages must be recorded and identifiable on a source record. A mandatory gratuity that is [less than] 20% or less of the charge for the sale or service of alcoholic beverages must be recorded and identifiable on the source record only if the gratuity is disbursed to nonqualified [nonqualifying] employees or recipients, which include but are not limited to, owners, club managers with no direct involvement in the particular event, janitorial help, chefs, cashiers, and dishwashers. All voluntary gratuities are not to be recorded on a source ticket.

(2) Source records shall be maintained in sequence by date.

(1) [(j)] Daily Summaries. Each permittee must maintain a daily summary, including the following information:

(1) all information required to be recorded on source records;

(2) complimentary alcoholic beverages dispensed, showing the number of services, type of service, kind of drink, and normal selling price;

(3) alcoholic beverages that were lost through theft, showing the number of containers lost by size, brand, and class. The theft must be reported to the proper police department and must be substantiated by the report of such police department;

(4) alcoholic beverages that were lost through a disaster, showing the number of containers lost by size, brand, and class. The disaster must be reported to the comptroller;

(5) alcoholic beverages that were lost through breakage or spillage, showing the number of containers lost by size, brand, and class or type of drink and size. A written report must be prepared at the time of the loss;

(6) alcoholic beverages that were lost through the cleaning, servicing, or repair of dispensing equipment lines, showing the amount lost by class or type of drink and supported by:

(A) reports prepared by the permittee at the time of the malfunction; and/or

(B) repair/service invoices prepared by the repair/service company;

(7) alcoholic beverages used in cooking, with purchases documented:

(A) by purchase invoices that have such beverages clearly denoted by either the seller or purchaser; or

(B) by separate purchase invoice;

(8) cover charges, door charges, entry fees, or admission fees. Admission fees [related to the reduced price for alcoholic beverages as described in 16 TAC §45.103 (relating to Regulations of "Happy Hour")] are subject to sales [the mixed beverage gross receipts tax- Sales] tax as provided by [34 TAC] §3.298 of this title, unless the Texas Alcoholic Beverage Commission determines that the admission fees collected are in violation of the Texas Alcoholic Beverage Commission rules or regulations [(relating to Amusement Services) is due on admission fees not related to reduced prices of alcoholic beverages. Permittees should consult the TABC to determine if a cover charge is prohibited under 16 TAC §45.103]; and

(9) information pertaining to changes made during the month concerning prices, glass sizes, bulk machine (e.g., margarita machine) recipes, ounces per serving, parties, or promotions.

(m) [(k)] Purchase invoices.

(1) A record of all alcohol and alcoholic beverages purchased or received showing the date, name and address of the person from whom purchased or received, the point from where shipped, point received, the quantity and kind of beverage (brand and class) received, and the total price paid for each brand and class received.

(2) Alcoholic beverages used in mixing drinks as the secondary ingredient (e.g., vermouth, triple sec) must be supported by purchase invoices which have such beverages clearly denoted by the purchaser.

(n) [(l)] Bad debts refund or credit.

(1) A mixed beverage permittee may take a credit against taxes to be paid to the comptroller or claim a refund on taxes paid to the comptroller for bad debt on sales[made on or after August 28, 1995].

(2) To establish bad debt credit or refund, a permittee's records must show:

- (A) date of sale or service;
- (B) name and address of purchaser;
- (C) source records of sale or service;
- (D) evidence that the gross receipts tax was paid to the comptroller;
- (E) all payments or credits applied to the account of the purchaser;
- (F) a designation that the account is a bad debt; and
- (G) evidence that the account has been or will be claimed as a bad debt deduction for federal income tax purposes.

(3) To determine the amount of bad debt allowance for tax, all payments or credits in reduction of a customer's account must be applied ratably between alcoholic beverages and other goods sold to that customer.

(4) If all or part of the amount claimed as a bad debt is later collected, the amount collected must be reported as a taxable receipt in the reporting period in which the collection was made.

(5) Accounts may not be labeled as a bad debt for the purpose of delaying the payment of the tax.

(o) ~~[(m)]~~ Audit and examination of tax account.

(1) Determination of tax liability. In examining the tax account of any permittee, the comptroller may compute and determine the amount of gross receipts tax liability based on reports filed with the comptroller, records or information obtained from the permittee, or records or information obtained from any seller who furnished alcoholic beverages to the permittee, or such other information which may come to the attention of the comptroller. The comptroller presumes that the disposition of all alcoholic beverages purchased by the permittee is taxable until established otherwise.

(2) Access to all information. The comptroller may examine all books, records, papers, documents, supplies, and equipment of a mixed beverage permittee. Additional records that may be required to be presented include, but are not limited to, the following:

- (A) all procedure and operation manuals;
- (B) all financial ledgers, journals, and registers;
- (C) all financial statements prepared internally or by an outside bookkeeper, accountant, or C.P.A.;
- (D) all bank statements;
- (E) all federal income tax returns; and
- (F) all state and federal employment tax returns and supporting documents.

(3) Failure to maintain or make records available for audit. In examining the tax account of each permittee, if the comptroller finds that the permittee has failed to maintain or make available the records required by any regulation of the comptroller, the comptroller may compute and determine the amount of the gross receipts tax liability from any available source or records, and estimates of the tax liability may be made by use of any available records for any period for which the permittee has failed to maintain records or file a report with the comptroller. In the event records are not made available, the comptroller will presume all alcohol purchased was sold. In the absence of records or evidence to the contrary, the comptroller may accept an average pour figure of 1.25 ounces per serving of liquor.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 17, 2008.

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Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: August 31, 2008

For further information, please call: (512) 475-0387



CHAPTER 20. TEXAS PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER C. PROCUREMENT

34 TAC §20.34

The Comptroller of Public Accounts proposes an amendment to §20.34, concerning Centralized Master Bidders List (CMBL). This section is being amended to clarify the annual fee for registration on the CMBL.

Government Code, §2155.266, authorizes the comptroller to charge a fee in an amount designed to recover the costs in making and maintaining the CMBL and in soliciting bids and proposals. The comptroller is proposing amendments to this rule to clarify the annual registration fee for the CMBL.

Subsection (a) is being amended to correct references to the Texas Building and Procurement Commission (TBPC). The TBPC was renamed the Texas Facilities Commission and the state purchasing function was transferred to the Comptroller of Public Accounts by House Bill 3560, 80th Legislature, 2007. House Bill 3560 also repealed the Catalog Information Systems Vendors (CISV) program. Therefore, the comptroller removes the reference to CISV from subsection (a).

Subsection (b) is being amended to clarify that the annual fee for the CMBL is \$70.00. Subsection (d)(2) is being amended to remove the word "annual" and replace it with "required." This is a stylistic change to remove any limitation or requirement of the fee from subsection (d). The fee will be identified in subsection (b) only, to avoid confusion.

The references to TBPC in subsections (d)(1), (f), and (g) are corrected to comptroller. Lastly, the reference to the CISV program is removed from subsection (h).

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, it would benefit the public by clarifying the process for state government procurement as well as the cost for vendors to participate in this process. There is no anticipated economic cost to individuals who are required to comply with the proposed rule. There are no significant anticipated fiscal implications for small businesses.

Comments on the proposal may be submitted to Ron Pigott, Deputy General Counsel, Texas Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Government Code, §2155.267, which authorizes the comptroller to adopt rules to administer the CMBL; and Government Code, §2155.0012, which authorizes the comptroller to adopt rules to administer Chapter 2155.

The amendment implements Government Code, Chapter 2155, Subchapter E.

§20.34. Centralized Master Bidders List.

(a) The comptroller [TBPC] maintains the Centralized Master Bidders List (CMBL) of the names and addresses of vendors which have registered for inclusion on the CMBL. The CMBL is maintained for the state's use in obtaining competitive bids for purchases ~~and for registering vendors who wish to be designated as catalog information systems vendors (CISV)].~~ Bid invitations and requests for proposals shall be transmitted to vendors on the CMBL for the solicited commodity and/or service designated by the vendor for open market, term contracts, competitive sealed proposal acquisitions and delegated purchases in excess of the non-competitive bid limit.

(b) Registration for the Centralized Master Bidders List is an on line process with a vendor managed web based system. There is a \$70.00 annual fee to remain registered on the CMBL. ~~[The established fee is to be paid annually.]~~

(c) It is the vendor's responsibility to maintain their CMBL profile to ensure correct information for receipt of bids based on products or services which can be provided for selected districts for the State of Texas.

(d) A vendor may be administratively removed from the CMBL for one or more of the following reasons:

(1) failing to pay or unnecessarily delaying payment of damages assessed by the comptroller [TBPC];

(2) failing to remit the required ~~annual~~ CMBL fee; or

(3) any factor set forth in Texas Government Code, §2155.070 and §2155.077.

(e) A vendor which has been removed from the CMBL shall not be reinstated until expiration of the period for which the vendor was removed and approval is granted.

(f) An error in addressing a bid invitation or request for proposal or a failure of the post office to deliver the solicitation will not be sufficient reason to require the comptroller [TBPC] to reject all other bids or proposals.

(g) State agencies shall use the CMBL to select bidders for competitive bids or proposals and to the fullest extent possible for purchases exempt from the comptroller's [TBPC's] purchasing authority. This requirement does not apply to the Texas Department of Transportation or to an institution of higher education as defined by Education Code, §61.003, [Education Code,] but an institution of higher education should use the CMBL when possible.

(h) As set forth in Texas Government Code, §2155.269, state agencies may waive the requirement to solicit only from bidders listed on the Centralized Master Bidders List (CMBL) by obtaining approval from the agency head or designee to add non-CMBL bidders to the final bid list. Non-CMBL bidders can be added to the final bid list for specific solicitations where the requirement to solicit only CMBL bidders is not warranted, such as to increase competition. ~~[This does not apply to purchases in §113.19 of this title, relating to Catalog of Information Systems Vendors (CISV).]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Cherry

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 25. SAFETY RESPONSIBILITY REGULATIONS

37 TAC §§25.1 - 25.8, 25.20, 25.21

The Texas Department of Public Safety (Department) proposes amendments to §§25.1 - 25.8, 25.20, and 25.21 concerning Safety Responsibility Regulations.

The Department proposes that any use of the word "accident" in §§25.1 - 25.4, 25.6, 25.7 and 25.21 be changed to "crash." These amendments are necessary to bring the rules into compliance with the national standard.

The Department proposes an addition to §25.2. The addition of subsections (c)(3)(D) and (c)(4)(D) pertain to the Department's recognition of the subrogation rights of insurance companies. The addition is allowed for under the Insurance Code and would enable insurance companies or their authorized representatives to sign on behalf of their insured. The Department also proposes an additional amendment to §25.2 as well. The amendment would remove language from the rule to make it consistent with recent bankruptcy court rulings.

The Department proposes an amendment to §25.1(b) that would change the word "will" to "may" in regard to the Department's duty to request supporting estimates and/or medical expenses. The amendment is necessary for the Department to eliminate the processing of cases that do not meet the criteria required for a suspension action and allow them to request supporting estimates and/or medical expenses as needed.

The Department proposes two additions to §25.6. The addition of subsection (g) would enable the Department to invalidate an SR-22 insurance certificate if a driver is convicted of a No Liability Insurance citation after filing an SR-22 insurance certificate with the Department. The addition of subsection (h) would assist the Department in implementing the use of the new Financial Responsibility Verification Program. The amendment is necessary to enable the Department to invalidate an SR-22 when it receives information through the new program indicating that the insurance coverage can no longer be confirmed or found on record.

The Department proposes several amendments to §25.7. The first amendment would change the time period in which an audit would be completed from 6 months to 1 year in subsection

(b)(2). The amendment would be consistent with standard business practices. The second amendment would increase the amount used by the Department in subsection (c)(1) to determine the ability of self-insurance applicants to satisfy claims. Third, an amendment to subsection (d)(3) would increase the amount self-insured entities agree to pay if a judgment is rendered against them. These amendments are necessary in order to make the rule consistent with the recent increase in minimum coverage amounts under Texas Transportation Code, §601.072.

The Department proposes the addition of the phrase "prior to renewal or issuance of a license" to all references to the requirement of a "reinstatement fee" in §§25.2 - 25.5. The addition of this phrase will clarify that the Department is not extending the suspension period until the reinstatement fee is paid.

Additional non-substantive changes have been made to the rules in order to comply with proper punctuation and formatting.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. The cost to individuals who are required to comply with the rules as proposed will be the \$100 reinstatement fee. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to ensure that individuals are fully informed regarding the obligations of both the Department and Texas motorists pursuant to the Safety Responsibility Act.

The Department has determined that this proposal is not a "major environmental rule" as defined by Governmental Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The Department has determined that Chapter 2007 of the Governmental Code does not apply to these rules. Accordingly, the Department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Sherrie Zgabay, Manager, Driver Improvement and Compliance Bureau, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0300, (512) 424-5001.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Chapter 601 of the Texas Transportation Code.

Texas Government Code, §411.004(3) and Chapter 601 of the Texas Transportation Code are affected by this proposal.

§25.1. Criteria for Establishing Crash [~~Accident~~] Cases for Enforcement.

(a) No action will be taken on any crash [~~accident~~] case except where:

(1) an officer's report resulting from an investigation of the crash [~~accident~~] clearly indicates one driver at fault; or

(2) a driver's crash [~~accident~~] report (ST-2) containing 2 sworn statements from uninvolved witnesses indicates one driver at fault, and

(3) the party at fault is not covered by liability insurance.

(b) Itemized estimates of repair or total loss valuation report for any vehicle or property damaged in the crash may [~~accident will~~] be requested from all parties involved.

(c) Doctor's reports and itemized medical bills reflecting the nature and extent of personal injuries sustained during the crash may [~~accident will~~] be requested from the parties involved.

(d) Action will not be initiated if no documentation from either subsection (b) or (c) of this section is received.

(e) No case will be established unless suspension action can be completed within 20 months of the crash [~~accident~~] date.

(f) All documents received for review are subject to release under the Texas Public Information Act.

§25.2. Crash [~~Accident~~] Suspension Provisions.

(a) A Notice of Suspension will be issued to the driver and/or owner in a crash [~~an accident~~] that meets the criteria in §25.1 of this title (relating to Criteria for Establishing Crash [~~Accident~~] Cases for Enforcement). The suspension will be effective 21 days from the date of the notice unless a timely [~~an~~] administrative hearing is requested or the Department receives complete compliance as indicated in subsection (c) of this section.

(b) If a hearing is requested timely (within 20 days from the date on the Notice), it will be granted pursuant to Texas Transportation Code (TRC), §601.156. The administrative hearing will be conducted pursuant to TRC 521 Subchapter N and 37 TAC §§15.81-15.85 of this title (relating to Driver Improvement).

(c) Compliance acceptable to prevent a suspension if filed prior to the effective date of the suspension, or to lift the suspension after the effective date in any of the following ways [~~is as follows~~]:

(1) information indicating liability insurance coverage at the time of the crash [~~accident~~] in the form of a letter on insurance company letterhead, or

(2) evidence of settlement indicating no probability of a judgment, such as:

(A) a copy of the front and back of a canceled check/checks totaling the amount of security required in the crash [~~accident~~], or

(B) evidence that the uninsured party had been paid by another party/parties involved or their insurance company, or

(C) proof that the damaged vehicle was illegally parked at the time of the crash [~~accident~~].

(3) form SR-11 (Release) or a properly executed document releasing the at-fault individual from all liability.

(A) The release must be signed by all owners of the damaged property and /or by all parties who sustained personal injury.

(B) ~~[(A)]~~ The ~~[the]~~ document must be notarized or signed before two uninvolved witnesses.

(C) ~~[(B)]~~ If ~~[if]~~ both the owner of the vehicle and the driver are suspended under one crash ~~[accident]~~ case, a release of either individual is deemed a release for both unless the release expressly states otherwise.

(D) If evidence is received that the owners of the damaged property and/or individuals who have sustained personal injury have been paid by their insurance company, the release may be signed by an authorized representative of the insurance company.

(4) form SR-19 (Installment Agreement) or other similarly styled document between the parties which must be:

(A) executed by the uninsured party,

(B) accepted by all parties who sustained damage in the crash ~~[accident]~~, ~~[and]~~

(C) signed before a notary or two witnesses, ~~and[-]~~

(D) if evidence is received that the owners of the damaged property and/or individuals who have sustained personal injury have been paid by their insurance company, the acceptance portion of the installment agreement may be signed by an authorized representative of the insurance company.

(5) security deposited in accordance with the original Notice of Suspension which must be:

(A) in cash, or

(B) by cashier's check or money order payable to the Texas Department of Public Safety, or

(C) by a surety bond written by an insurance company authorized to execute surety bonds in this state, or [and]

~~[(D) accompanied by form SR-22 (insurance certificate) and form SR-22A (certification of a 6 month prepaid liability insurance policy), and]~~

~~[(6) a reinstatement fee if compliance is not received within 21 days from the date on the Notice of Suspension, or]~~

(D) [(7)] a bankruptcy petition indicating "filed" by the court, [or] a final order of bankruptcy or discharge [along with a matrix listing the creditor/creditors in the accident]. A reinstatement fee is required prior to the renewal or issuance of a license if acceptable compliance is not received prior to the effective date of the suspension, unless the suspension was cleared due to bankruptcy proceedings. [When bankruptcy is filed in an accident case, no reinstatement fee is required.]

(E) If a person satisfies a security deposit by the methods described in subparagraphs (A) - (C) of this paragraph, the security deposit must also be accompanied by a form SR-22 (insurance certificate) and form SR-22A (certificate of a 6 month prepaid liability insurance policy).

(d) When the owner and operator are separate persons and each one is required to deposit security, a joint deposit may be made with a stipulation in writing that such deposit is on behalf of both persons required to deposit the security and will be acceptable compliance for both the owner and operator. If no stipulation of joint deposit is received, the deposit will be filed on behalf of the depositor only.

(e) Each person depositing security that must file proof of insurance in the form of an SR-22 in his/her name, must also file form SR-22A as stated in (c)(5)(E) [(e)(5)(D)] of this section.

(f) Disbursement of security.

(1) security will be released to the injured or damaged party upon receipt of a certified copy of a judgment, form SR-42 (Transcript of Civil Proceedings) and form SR-61 (Application for Payment of Judgments Out of Security Deposited).

(A) security released will be in the amount of the judgment.

(B) if the amount of security on file does not satisfy the judgment, the driving privileges of the negligent party will be suspended under the judgment provisions for the balance of the judgment.

(C) if the amount of security on file exceeds the amount of the judgment, the depositor will be sent form SR-14 or SR-14A (Application for Return of Security), to have the balance disbursed.

(2) security deposit will be released to the damaged or injured party upon receipt of form SR-11 (Release), signed by the damaged party and form SR-45 (Release of Deposit), signed by the depositor.

(3) security deposit will be released to the depositor or person for whom security is deposited by showing eligibility and filing a completed form SR-14 or SR-14A (Application for Return of Security Deposit). Eligibility may be shown by evidence of a release from liability, two year anniversary of crash ~~[accident]~~ date for initial suspensions, or two year anniversary date from the date of deposit for suspensions based on an installment agreement in default.

(4) if the depositor is deceased, the deposit may be released to the person named as executor of his estate. The appropriate form/forms as indicated in paragraphs (2) or (3) of this subsection, along with a copy of the will, or a Letter of Testamentary must be filed to have the monies disbursed.

(g) If an installment agreement is filed as compliance in a crash ~~[an accident]~~ case, upon receipt of form SR-73 (Notice of Default), the license of the person who defaulted on the agreement will be suspended. Compliance may be in the form of:

(1) a release as stated in subsection (c)(3) of this section, or

(2) a security deposit as stated in subsection (c)(5) of this section, or

(3) an installment agreement granted by order of a court where an agreed judgment has been rendered, or [and]

~~[(4) a reinstatement fee if compliance is not received prior to the effective date of the suspension, or]~~

(4) ~~[(5)]~~ bankruptcy as stated in subsection (c)(5)(D) [(e)(7)] of this section.

(5) a reinstatement fee is required prior to the renewal or issuance of a license if acceptable compliance is not received prior to the effective date of the suspension, unless the suspension was cleared due to bankruptcy proceedings.

(h) If, after two years from the crash ~~[accident]~~ date for initial suspensions or two years from the date on the Notice of Default for suspensions based on an installment agreement in default, no judgment has been filed against the party at fault, the suspension may be withdrawn by filing form SR-60 (Application to Waive Requirement to Deposit Security)~~[- and any required reinstatement fee]~~. A reinstatement fee is required prior to the renewal or issuance of a license.

§25.3. Judgments.

(a) A judgment resulting from a crash ~~[an accident]~~ must arise out of ownership, maintenance, or use of a motor vehicle by the judg-

ment debtor upon a public highway, or be a suit on a settlement agreement resulting from a motor vehicle crash [~~accident~~].

(b) Action against a judgment debtor may not be taken if the judgment is filed by the owner of a vehicle against the driver of that vehicle.

(c) Action against a judgment debtor will not be taken unless the department receives a certified copy of the judgment, form SR-42 (Transcript of Civil Proceedings), and form SR-62 (Notice of Unsatisfied Judgment), from the person requesting such action.

(d) An Order of Suspension will be mailed to the judgment debtor. The suspension is effective on the date of the Order.

(e) To lift the suspension, the judgment debtor must submit one of the following compliance items:

(1) a release as stated in §25.2 (c)(3) of this title (relating to Crash [~~Accident~~] Suspension Provisions),

(2) an installment agreement between the judgment debtor and the judgment creditor approved and signed by the judge in the court where the judgment was rendered,

(3) a form SR-84 (Judgment Creditor's Consent to Allow Licensing), or

(4) a bankruptcy petition indicating "filed" by the court, ~~[or] a final order of bankruptcy or discharge [along with a matrix listing the judgment creditor].~~

(f) If a judgment was rendered within the past two years, the debtor must also file proof of insurance in the form of an SR-22 (insurance certificate).

(g) A reinstatement fee is required prior to the renewal or issuance of a license ~~[for full compliance]~~ in a judgment case unless the suspension was lifted due to bankruptcy proceedings.

(h) If a suspension is withdrawn by the filing of form SR-84 (Judgment Creditor's Consent to Allow Licensing), the driving privileges can be suspended again after 6 months by filing form SR-85 (Revocation of Judgment Creditor's Consent).

(i) If a person defaults on an agreed judgment or court approved installment agreement, the license can be suspended by filing form SR-46 (Notice of Default on Court Approved Installment Agreement) along with a certified copy of the agreed judgment or court approved installment agreement.

(j) If a judgment debtor was covered by liability insurance at the time of the crash [~~accident~~] out of which the judgment arose and the insurance company denies responsibility for payment of the judgment, the debtor is not excused from complying with the judgment provisions of the Act unless the judgment debtor:

(1) files suit against the insurer to place responsibility for payment of the judgment upon the insurer, and

(2) furnishes to the department a certified copy of the petition, proper insurance coverage is presumed pending the final disposition of the suit.

§25.4. Suspension Resulting from an Out-of-State Crash [~~Accident~~] or Judgment.

(a) The department will initiate suspension action under the reciprocity provision in the Texas Transportation Code, §601.009, upon request by the licensing authorities from another state that a driver licensed in Texas be suspended as a result of a crash [~~an accident~~] suspension in their state.

(1) a Notice of Suspension will be mailed to the negligent party with an effective date 21 days from the date on the Notice.

(2) compliance acceptable to prevent suspension prior to the effective date of the suspension, or to lift the suspension after the effective date is as follows:

(A) evidence of liability insurance at the time of the crash [~~accident~~] in the form of a letter on insurance company letterhead, or

(B) a clearance letter with regard to the crash [~~accident~~] from the licensing authorities in the state where the crash [~~accident~~] occurred, and

(C) a reinstatement fee is required prior to the renewal or issuance of a license, if the compliance is received after the effective date of the suspension.

(b) The department will send an Order of Suspension to the negligent party/parties effective on the date of the Order, upon request by the authorities from another state that a driver or owner licensed in Texas be suspended as the result of a judgment rendered in their state.

(1) compliance acceptable to lift the suspension is a clearance letter with regard to the judgment from the licensing authorities in the state where the judgment was rendered.

(2) a reinstatement fee is required prior to the renewal or issuance of a license.

§25.5. Enforcement of Failure to Maintain Financial Responsibility.

(a) Upon receipt of a second or subsequent conviction for no liability insurance, an Order of Suspension will be mailed to the licensee. The suspension will be effective 21 days from the date on the Order and will continue for two years from the date of the second or subsequent conviction for no liability insurance unless the department receives:

(1) evidence of financial responsibility on the date of the citation, or

(2) an SR-22 (insurance certificate).

(b) Evidence of financial responsibility for the citation date may be shown by:

(1) a letter on the insurance company's letterhead indicating coverage for the date of the offense, or

(2) a copy of a certificate issued by the department indicating the vehicle driven or the person is self insured.

(c) If the individual being suspended is not named on the insurance policy used as evidence of liability coverage, a copy of the citation must be submitted listing the vehicle covered on the policy.

(d) If compliance in the form of an SR-22 (insurance certificate) is filed and not received by 21st day from the date on the Order of Suspension, a reinstatement fee will be required prior to the renewal of issuance of a license.

(e) If an SR-22 (insurance certificate) is filed as compliance, it must be maintained with the department for two years from the most recent conviction date for which evidence of financial responsibility was required.

(1) if the department receives notification of cancellation of the SR-22 (form SR-26) from that insurance company, the individual's driving privileges will be suspended until a new SR-22 (insurance certificate) is filed or until the second anniversary date of the conviction for which proof of financial responsibility was required.

(2) a reinstatement fee is required prior to the renewal or issuance of a license for the suspension resulting from the cancelled SR-22 [~~canceled SR22~~].

§25.6. Financial Responsibility Certificate (Form SR-22).

(a) The SR-22 (insurance certificate) is a form prescribed by the department and issued by insurance companies when evidence of financial responsibility must be certified. Requirements for acceptance of the filing are:

(1) issued by an insurance company authorized to write liability insurance coverage for the State of Texas;

(2) issued in the name of the person required to file to include their driver license/identification number, date of birth, and list all owned vehicles or indicate non-owner policy;

(3) issued for the State of Texas;

(4) original document signed by an authorized representative of the insurance company; and

(5) include the complete name of the insurance company as licensed by the State Board of Insurance.

(b) The SR-26 (cancellation of SR-22 insurance certificate) is a form submitted by an insurance company to notify the department that the SR-22 (insurance certificate) issued by that company has been canceled. The filing of form SR-26 [SR26] may initiate suspension action by the department if the individual's driver record indicates that the SR-22 [SR22] (insurance certificate) is still required at the time the SR-26 [SR26] is received.

(c) A second filing of form SR-22 (insurance certificate) by the same insurance carrier cancels any SR-22 (insurance certificate) previously issued by that company and filed with the department.

(d) To maintain compliance with statutory suspension action, the SR-22 [SR22] must remain on file for;

(1) 2 years from the date of the crash [~~accident~~], when depositing security as compliance for a crash [~~an accident~~] case,

(2) 2 years from the date of the most recent conviction, for conviction based suspensions, or

(3) 2 years from the date a judgment was rendered in court for judgment cases.

(e) If the SR-22 (insurance certificate) is required as the result of a security deposit in a crash [~~an accident~~] or default case, it must be accompanied by form SR-22A (certification of a 6 month prepaid liability policy).

(f) An SR-22 (insurance certificate) on file more than 2 years will not be valid for any new conviction that requires the filing of an SR-22 (insurance certificate). To comply with the new action, the licensee will be required to file a subsequent SR-22 (insurance certificate) or provide documentation from the insurance company that the previous filing is still valid.

(g) An SR-22 on file will not be considered valid if the driver receives a conviction for "No Motor Vehicle Liability Insurance" with an offense date after the date the SR-22 was filed with the department.

(h) An SR-22 on file may no longer be considered valid if the department receives information through the Financial Responsibility Verification Program indicating that the insurance coverage is unconfirmed or the record is not on file.

§25.7. Self-Insurance.

(a) Companies with 26 or more vehicles owned and registered in their name, and who meet the minimum financial qualifications may

apply for a self-insurance certificate by submitting a completed application for self-insurance.

(b) The application for self-insurance includes:

(1) a department application form which;

(A) must be fully completed,

(B) provide past claim history,

(C) contact information, and

(D) information concerning claim procedures.

(2) the applicant company's financial statement which must be in the form of an audit by an independent Certified Public Accountant completed within 1 year [~~6 months~~] from the date the application is filed with the department, and

(3) any other documentation required by the department to make a determination as to the company's ability to satisfy claims.

(c) The department will base its determination of the applicant's ability to pay claims on the following:

(1) a review of the financial statements submitted to determine if cash, marketable securities, and accounts receivable equal the normal monthly operating expenses plus a sum of \$225,000 [~~\$165,000~~]. The \$225,000 [~~\$165,000~~] represents that amount needed to satisfy three \$75,000 [~~\$55,000~~] claims arising from traffic crashes [~~accidents~~],

(2) information supplied on the application regarding past claim history, and

(3) other information provided by the applicant demonstrating the ability to satisfy claims.

(d) The certificate issued by the department;

(1) will be issued to the individual entity named on the vehicle registration only.

(A) if two entities are named, both entities can be named on the certificate.

(B) all named parties must have submitted the required financial statements.

(2) will contain information regarding the claim process, and

(3) will be an agreement, signed by an authorized agent of the entity seeking self insurance, stating the self-insurer will pay the same judgments in the same amount as an insurer would be obligated to pay under an owner's motor vehicle liability insurance policy up to \$75,000 [~~\$55,000~~] per crash [~~accident~~].

(e) Self-insurance certificates are issued for 36 months. To maintain continuous certification, applications for renewal of a self-insurance certificate must be submitted within 90 days of the expiration date of the current certificate.

§25.8. Reinstatement.

When a party's license and/or registrations have been suspended, and proof of financial responsibility is a prerequisite for withdrawal of such suspension, a statutory reinstatement fee will be required prior to renewal or issuance of a [the] license and/or registrations. When a party's license and/or registrations are suspended in several cases and proof of financial responsibility is required in each case, only one statutory reinstatement fee will be required prior to renewal or issuance of a license.

§25.20. Compulsory Insurance--Driver's License Road Test.

(a) Evidence of financial responsibility. Owners and/or operators of motor vehicles are required to furnish information concerning evidence of financial responsibility upon request to a driver license employee. This department's policy will be to accept the following as evidence of financial responsibility:

(1) liability insurance policy in at least the minimum amounts required by the Safety Responsibility Act that covers the vehicle;

(2) standard proof of liability insurance form promulgated by the Texas Department of Insurance and issued by a liability insurer that includes:

- (A) name of insurer;
- (B) insurance policy number;
- (C) policy period;
- (D) name and address of each insured;

(E) policy limits or a statement that the coverage complies with at least the minimum amounts required by the Safety Responsibility Act; and

(F) make and model of each covered vehicle;

(3) certificate issued by the Department of Public Safety that shows the vehicle is covered by self-insurance;

(4) certificate issued by the state comptroller that shows that the owner of the vehicle has on deposit with the comptroller money or securities in at least the amount required by the Safety Responsibility Act;

(5) Texas Department of Transportation carrier registration certificates (cab cards), including:

- (A) commercial motor vehicle registration certificates;
- (B) commercial motor vehicles registered under the Single State Registration System;
- (C) temporary registration of international motor carriers (insurance stamp);
- (D) household goods carrier registration certificates; or
- (E) tow truck registration certificates;

(6) certificate issued by the Department of Public Safety that shows that the vehicle is a vehicle for which a bond is on file with the Department of Public Safety as provided by the Safety Responsibility Act;

(7) copy of a certificate issued by the county judge of a county in which the vehicle is registered that shows that the owner of the vehicle has on deposit with the county judge cash or a cashier's check in at least the amount required by the Safety Responsibility Act;

(8) copies of the aforementioned documents; and

(9) other evidence such as an insurance binder which confirms to the satisfaction of the officer that the owner and/or driver is in compliance with the Safety Responsibility Act.

(b) Road test. Applicants for the driver [driver's] license road test shall be required to complete the automobile liability insurance coverage or exemption certification on the appropriate application. If the response is "yes," the applicant will be scheduled for a road test. If the response is "no," the applicant will be required to furnish documented evidence of financial responsibility prior to being scheduled for the road test. Driver license employees will examine evidence of financial responsibility in every case prior to giving the road test. This

examination will be performed in conjunction with the vehicle inspection. Applicants will be rejected if they fail to provide acceptable evidence.

§25.21. Compulsory Insurance--Compliance and Enforcement.

(a) Evidence of financial responsibility. Owners and/or operators of motor vehicles are required to furnish information concerning evidence of financial responsibility upon request to a law enforcement officer. This department's policy will be to accept the following as evidence of financial responsibility:

(1) liability insurance policy in at least the minimum amounts required by the Safety Responsibility Act that covers the vehicle;

(2) standard proof of liability insurance form promulgated by the Texas Department of Insurance and issued by a liability insurer that includes:

- (A) name of insurer;
- (B) insurance policy number;
- (C) policy period;
- (D) name and address of each insured;

(E) policy limits or a statement that the coverage complies with at least the minimum amounts required by the Safety Responsibility Act; and

(F) make and model of each covered vehicle;

(3) certificate issued by the Department of Public Safety that shows the vehicle is covered by self-insurance;

(4) certificate issued by the state comptroller that shows that the owner of the vehicle has on deposit with the comptroller money or securities in at least the amount required by the Safety Responsibility Act;

(5) Texas Department of Transportation carrier registration certificates (cab cards), including:

- (A) commercial motor vehicle registration certificates;
- (B) motor vehicles registered under the Single State Registration System;
- (C) temporary registration of international motor carriers (insurance stamp);
- (D) household goods carrier registration certificates; or
- (E) tow truck registration certificates;

(6) certificate issued by the Department of Public Safety that shows that the vehicle is a vehicle for which a bond is on file with the Department of Public Safety as provided by the Safety Responsibility Act;

(7) copy of a certificate issued by the county judge of a county in which the vehicle is registered that shows that the owner of the vehicle has on deposit with the county judge cash or a cashier's check in at least the amount required by the Safety Responsibility Act;

(8) copies of the aforementioned documents; and

(9) other evidence such as an insurance binder which confirms to the satisfaction of the officer that the owner and/or driver is in compliance with the Safety Responsibility Act.

(b) Enforcement policy. Commissioned members of this department shall request an owner and/or operator of a motor vehicle upon a public highway to furnish information concerning evidence of

financial responsibility when practical in all traffic stops or investigations of motor vehicle traffic crashes [accidents]. Enforcement action will be initiated in accordance with established guidelines.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 21, 2008.

TRD-200803708

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: August 31, 2008

For further information, please call: (512) 424-2135



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 2. MENTAL RETARDATION AUTHORITY RESPONSIBILITIES

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new Subchapter G, consisting of §§2.301 - 2.303, 2.305, 2.307, 2.309, 2.311, 2.313, and 2.315, concerning the role and responsibilities of a mental retardation authority in Chapter 2, Mental Retardation Authority Responsibilities; and the repeal of Subchapter H, consisting of §§2.351 - 2.373, concerning standards and quality assurance for mental retardation community services and supports, in Chapter 2, Mental Retardation Authority Responsibilities.

BACKGROUND AND PURPOSE

The purpose of the proposal is to establish rules governing the role and responsibilities of a mental retardation authority (MRA), as required by Texas Health and Safety Code, §533.0355, amended by House Bill 2439, Section 2, 80th Legislature, Regular Session, 2007. The proposed rules incorporate current MRA practices and procedures and include provisions regarding quality assurance and the health, safety, and rights of individuals currently addressed in the rules proposed for repeal.

SECTION-BY-SECTION SUMMARY

Proposed new §2.301 states that the purpose of the new subchapter is to describe the role and responsibilities of an MRA.

Proposed new §2.302 states that the subchapter applies to an MRA.

Proposed new §2.303 contains the definitions for the subchapter.

Proposed new §2.305 summarizes an MRA's role and responsibilities and the contents of the subchapter.

Proposed new §2.307 describes an MRA's access, screening, intake, service coordination, enrollment, state MR facility admission, and safety net functions.

Proposed new §2.309 describes an MRA's responsibilities for institutional residents.

Proposed new §2.311 describes the requirements for an MRA in the provision and oversight of general revenue services.

Proposed new §2.313 describes the requirement to have policies and procedures to protect the rights of individuals and the process for implementing behavioral support and restraints. This new section also describes requirements regarding medication practices and obtaining informed consent for prescribing psychoactive medication.

Proposed new §2.315 describes an MRA's administrative functions, including requirements regarding local planning, quality management, utilization management, information systems, network management, consideration of public input, interest list management, and staff member qualifications.

The repeal of §§2.351 - 2.373 is proposed to allow for the proposed new sections regarding the role and responsibilities of an MRA to be located in a new subchapter.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed new sections and repeal are in effect, enforcing or administering the new sections and repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new sections and repeal will not have an adverse economic effect on small businesses or micro-businesses, because the rules only apply to MRAs, which are public agencies or organizations. A small or micro-business is defined, in part, as a legal entity that is formed for the purpose of making a profit.

PUBLIC BENEFIT AND COSTS

Gary Jessee, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the new sections and repeal are in effect, the public benefit expected as a result of enforcing the new sections and repeal is that DADS rules will reflect current MRA practice and be in compliance with state law.

Mr. Jessee anticipates that there will not be an economic cost to persons who are required to comply with the new sections and repeal. The new sections and repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Marcia Shultz at (512) 438-3532 in DADS' Mental Retardation Authority Section of the Access and Intake Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-025, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to rulescomments@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of

the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be either (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 025" in the subject line.

SUBCHAPTER G. ROLE AND RESPONSIBILITIES OF AN MRA

40 TAC §§2.301 - 2.303, 2.305, 2.307, 2.309, 2.311, 2.313, 2.315

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, §533.0355, which provides that the HHSC executive commissioner shall adopt rules establishing the role and responsibilities of local mental retardation authorities; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new sections implement Texas Government Code, §531.0055, Texas Health and Safety Code, §533.0355, and Texas Human Resources Code, §161.021.

§2.301. Purpose.

The purpose of this subchapter is to describe the role and responsibilities of an MRA, including those responsibilities described in THSC, §533.0355(b).

§2.302. Application.

This subchapter applies to an MRA.

§2.303. Definitions.

The following terms and phrases, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Actively involved--Significant, ongoing, and supportive involvement with an individual by a person, as determined by the MRA, based on the person's:

(A) interactions with the individual;

(B) availability to the individual for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the individual's needs, preferences, values, and beliefs.

(2) Adaptive behavior--The effectiveness with or degree to which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group as assessed by a standardized measure.

(3) Behavioral emergency--A situation in which severely aggressive, destructive, violent, or self-injurious behavior exhibited by an individual:

(A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the individual or others;

(B) has not abated in response to attempted preventive de-escalatory or redirection techniques;

(C) is not addressed in a written behavioral support plan; and

(D) does not occur during a medical or dental procedure.

(4) Behavioral support--Specialized interventions that assist an individual with increasing adaptive behaviors to replace or modify maladaptive or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in home and family life or community life.

(5) Capacity--A person's ability to:

(A) understand the information provided to the person regarding a proposed psychoactive medication or behavioral support plan as described in §2.313(d)(1) or (e)(3) of this subchapter (relating to Health, Safety, and Rights); and

(B) make a decision whether to take the proposed medication or accept the behavioral support plan.

(6) CARE--The Client Assignment and Registration System database.

(7) CRCG--Community resource coordination group. A local interagency group composed of public and private agencies, organizations, and families that develops a coordinated plan of services and supports for an individual with complex needs. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More than One Agency, available at www.dads.state.tx.us.

(8) DADS--The Department of Aging and Disability Services.

(9) Designated MRA--The MRA assigned to an individual in CARE.

(10) Developmental period--Birth through 17 years of age.

(11) General revenue services--Non-residential mental retardation services funded by general revenue through the performance contract, including:

(A) eligibility determinations;

(B) service coordination not funded by Medicaid Targeted Case Management; and

(C) respite.

(12) HCS Program--The Home and Community-based Services Program. A program operated by DADS and approved by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act that provides community-based services and supports to eligible individuals who live in their own homes or family homes or other residences permitted under DADS rules related to the HCS Program.

(13) ICF/MR Program--The Intermediate Care Facility for Persons with Mental Retardation Program. A program operated by DADS in accordance with the Social Security Act that provides Medicaid-funded residential services to individuals with mental retardation or a related condition.

(14) Individual--A person seeking or receiving services and supports from an MRA.

(15) Informed consent--Consent given by an individual or the individual's LAR if the person giving the consent:

(A) is:

(i) 18 years of age or older; or

(ii) younger than 18 years of age and is or has been married or had the disabilities of minority removed for general purposes by court order as described in the Texas Family Code, Chapter 31;

(B) has not been determined by a court to lack capacity to make decisions with regard to the matter for which consent is being sought;

(C) has been provided the information described in §2.313(d)(1) or (e)(3) of this subchapter;

(D) has the capacity to give consent, as determined by the prescribing physician or the professional who develops the behavioral support plan, as applicable; and

(E) gives the consent voluntarily, free from coercion or undue influence.

(16) LAR--legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and who may be a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(17) Local planning--A broad-based community participatory process that identifies community values, service needs, and service priorities for individuals in the mental retardation priority population within a local service area and which guides resource development and allocation and results in a local plan that identifies goals and establishes strategies for accomplishment.

(18) Local service area--A geographic area composed of one or more Texas counties as identified in the performance contract to be served by an MRA.

(19) Medication class--A group of medications with similar actions and indications for use.

(20) Mental retardation--Consistent with THSC, §591.003, significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(21) MRA--mental retardation authority. As defined in THSC, §531.002, an entity designated in accordance with the THSC, §533.035(a), to which the Health and Human Services Commission executive commissioner delegates the state's authority and responsibility within a specified region for planning, policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of mental retardation services to persons with mental retardation in the most appropriate and available setting to meet individual needs in one or more local service areas.

(22) Mental retardation priority population--Those persons who meet one or more of the following descriptions:

(A) have mental retardation;

(B) have a pervasive developmental disorder;

(C) have a related condition, are eligible for, and are enrolling in the ICF/MR Program, the HCS Program, or the TxHmL Program;

(D) are nursing facility residents who are eligible for specialized services for mental retardation or a related condition pursuant to §1919(e)(7) of the Social Security Act; or

(E) are children eligible for early childhood intervention services provided in accordance with Chapter 108 of this title (relating to Division for Early Childhood Intervention Services).

(23) Performance contract--A written agreement between DADS and an MRA as required by THSC, §534.054, for the provision of one or more functions as described in THSC, §533.035(a), and for the provision of general revenue services. The performance contract allocates general revenue funds for the MRA to fulfill its role and responsibilities as an MRA.

(24) Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(25) Person-directed planning--A process that empowers the individual (and the LAR on the individual's behalf) to direct the development of a plan for services and supports that meet the individual's outcomes. The process:

(A) identifies existing services and supports necessary to achieve the individual's outcomes;

(B) identifies natural supports available to the individual and negotiates needed service system supports;

(C) occurs with the support of a group of people chosen by the individual (and the LAR on the individual's behalf); and

(D) accommodates the individual's style of interaction and preferences regarding time and setting.

(26) Planning team--Persons convened by an individual's MRA to develop a plan of services and supports for an individual. The team includes:

(A) the individual;

(B) if applicable, the LAR or actively involved person;

(C) the staff member assigned to the individual by the MRA; and

(D) other persons chosen by the individual, LAR, or actively involved person.

(27) Psychoactive medication--A medication for which the primary intended therapeutic effect is to treat or ameliorate the signs or symptoms of mental disorder, or to modify mood, affect, perception, or behavior.

(28) Restraint--A manual method, except for physical guidance or prompting of brief duration, or a mechanical device to restrict:

(A) the free movement or normal functioning of all or a portion of an individual's body; or

(B) normal access by an individual to a portion of the individual's body.

(29) Rights protection officer--As referenced in §4.113 of this title (relating to Rights Protection Officer at a State MR Facility or MRA), the staff member of an MRA whose primary duty is to advocate for the rights of individuals served by that MRA and to assist LARs in advocating for the rights of individuals.

(30) Safety net functions--As referenced in THSC, §533.0355(a)(6), functions performed by an MRA with available resources to respond to an individual in the mental retardation priority

population who has an intensive need or who is in crisis to protect the individual's health and safety.

(31) Service coordination--A service provided by an MRA as defined in §2.553 of this chapter (relating to Definitions) contained in Subchapter L (relating to Service Coordination for Individuals with Mental Retardation).

(32) Service coordinator--An MRA employee who:

(A) meets the qualifications and has received training set forth in §2.559 of this chapter (relating to Minimum Qualifications) and §2.560 of this chapter (relating to Staff Training) contained in Subchapter L (relating to Service Coordination for Individuals with Mental Retardation); and

(B) performs service coordination activities.

(33) Services and supports--General revenue services and other publicly funded mental retardation services.

(34) Staff member--Personnel of an MRA including a full-time and part-time employee and a contractor.

(35) State MR facility--A state school or a state center with a mental retardation residential component that is operated by DADS.

(36) Subaverage general intellectual functioning--Consistent with THSC, §591.003, measured intelligence on standardized general intelligence tests of two or more standard deviations (not including standard error of measurement adjustments) below the age-group mean for the tests used.

(37) THSC--The Texas Health and Safety Code.

(38) TxHmL Program--The Texas Home Living Program. A program operated by DADS and approved by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act, that provides community-based services and supports to eligible individuals who live in their own homes or in their family homes.

§2.305. MRA's Role and Responsibilities.

(a) An MRA's role is to serve as the single point of access to services and supports for the residents within the MRA's local service area.

(b) As the single point of access, an MRA's responsibilities include:

(1) providing information about services and supports to an individual and LAR or actively involved person;

(2) ensuring an individual's access into services and supports by:

(A) conducting intake and eligibility activities for an individual seeking services and supports; and

(B) enrolling or admitting an eligible individual into services and supports;

(3) performing safety net functions;

(4) ensuring the provision and oversight of general revenue services by:

(A) developing and managing a network of general revenue services providers; and

(B) establishing processes to monitor the performance of general revenue services providers;

(5) conducting service coordination;

(6) conducting utilization management;

(7) conducting planning for the local service area, including ensuring involvement by a local advisory committee and other stakeholders;

(8) conducting permanency planning for certain individuals under 22 years of age; and

(9) protecting the rights of an individual.

(c) This subchapter elaborates on the responsibilities listed in subsection (b) of this section and describes other responsibilities of an MRA.

§2.307. Access, Screening, Intake, Service Coordination, Enrollment, State MR Facility Admission, and Safety Net Functions.

(a) Access. An MRA must have a place of business reasonably accessible to the residents of the local service area where an individual can learn about all services and supports for which the individual may be eligible. The MRA must assist an individual for whom it is the designated MRA with accessing such services and supports.

(b) Screening. An MRA must develop policies and procedures related to screening an individual seeking services and supports that address:

(1) providing an explanation of services and supports to the individual and LAR or actively involved person and family member using DADS-approved documents;

(2) gathering and documenting information to determine a need for services and supports;

(3) triaging immediate needs to be responsive to a crisis situation;

(4) determining whether a request can be met with resources at the MRA or whether the individual will be directed to alternate resources in the community;

(5) if the individual is under 22 years of age and the LAR is requesting residential services, providing to the LAR an explanation of permanency planning;

(6) assisting the individual or LAR in identifying services and supports preferences and documenting those preferences; and

(7) registering the individual's name on the appropriate interest lists.

(c) Intake. An MRA must develop policies and procedures related to intake that address:

(1) determining if an individual seeking services and supports is a member of the mental retardation priority population in accordance with Chapter 5, Subchapter D, of this title (relating to Diagnostic Eligibility for Services and Supports--Mental Retardation Priority Population and Related Conditions), and eligible for general revenue services;

(2) determining an individual's eligibility for service coordination in accordance with §2.554 of this chapter (relating to Eligibility) and §2.555 of this chapter (relating to Assessing an Individual's Need for Service Coordination) contained in Subchapter L (relating to Service Coordination for Individuals with Mental Retardation), and documenting a description of the individual's preferences and needs using a person-directed planning process that is consistent with DADS' *Person Directed Planning and Family Directed Planning Guidelines for Individuals with Mental Retardation*;

(3) conducting the financial assessment as required by Subchapter C of this chapter (relating to Charges for Community Services)

and assisting an individual with applying for Medicaid benefits, Supplemental Security Income, or Social Security Disability Income, if appropriate;

(4) providing an explanation of rights of individuals with mental retardation in accordance with Chapter 4, Subchapter C of this title (relating to Rights and Protection of Individuals Receiving Mental Retardation Services); and

(5) providing information to the individual and LAR about the MRA's complaint, notification, and appeal processes in accordance with Subchapter A of this chapter (relating to Mental Retardation Authority Notification and Appeal).

(d) Service coordination.

(1) An MRA must offer an individual service coordination if the individual:

(A) is eligible for Medicaid and service coordination;
or

(B) is not eligible for Medicaid, but is eligible for service coordination and will be enrolled in general revenue services other than service coordination.

(2) An MRA must designate a staff member to authorize and monitor an individual's service need in accordance with the performance contract if the individual:

(A) is not eligible for service coordination; and

(B) will be enrolled in a general revenue service other than service coordination.

(c) Enrollment into general revenue services.

(1) An MRA must develop policies and procedures related to enrollment into general revenue services that address:

(A) the development of a written plan of services and supports based on the individual's preferences and needs that includes:

(i) current services and supports, including existing natural supports;

(ii) outcomes to be achieved by the individual and the general revenue services to be provided to the individual;

(iii) any assessment to be conducted after enrollment;

(iv) the reason for each general revenue service to be provided; and

(v) the amount and duration of each general revenue service to be provided; and

(B) the authorization for the provision of the general revenue services identified in the plan.

(2) Except for the provision of respite in an emergency, the MRA may not provide general revenue services unless authorized in accordance with the policies and procedures required by paragraph (1) of this subsection.

(f) Enrollment in the ICF/MR, HCS, and TxHmL programs.

(1) An MRA must enroll an individual in the ICF/MR, HCS, or TxHmL programs, in accordance with the performance contract and DADS rules relating to those programs.

(2) An MRA must conduct permanency planning for an individual under 22 years of age who is enrolling in an HCS Program

residential setting or an ICF/MR in accordance with the performance contract and DADS rules relating to those programs.

(g) Commitment or admission to a state MR facility.

(1) An MRA must perform its responsibilities related to an individual's commitment or admission to a state MR facility in accordance with Subchapter F of this chapter (relating to Continuity of Services--State Mental Retardation Facilities).

(2) An MRA must conduct permanency planning for an individual under 22 years of age who is committed to a state MR facility in accordance with §2.283 of this chapter (relating to MRA and State MR Facility Responsibilities) contained in Subchapter F (relating to Continuity of Services--State Mental Retardation Facilities), and the performance contract.

(h) Safety net functions. An MRA must develop policies and procedures related to safety net functions that reflect the priorities of its local planning efforts and are responsive to the needs of its local service area.

§2.309. MRA Responsibilities for Institutional Residents.

(a) Community living options information process at state MR facilities. An MRA must implement the community living options information process for residents 22 years of age and older at state MR facilities as required by the performance contract and DADS rules.

(b) Continuity of services. An MRA must comply with Subchapter F (relating to Continuity of Services--State Mental Retardation Services), Division 4 of this chapter (relating to Moving From a State MR Facility to an Alternative Living Arrangement), when a state MR facility interdisciplinary team recommends an alternative living arrangement for an individual residing in the facility.

(c) Permanency planning.

(1) An MRA must conduct permanency planning for an individual under 22 years of age who is:

(A) residing in a nursing facility;

(B) enrolled in the ICF/MR Program, including a state MR facility; or

(C) receiving residential support or supervised living from the HCS Program.

(2) An MRA must conduct permanency planning in accordance with the performance contract and the following rules:

(A) Section 2.283 of this chapter (relating to MRA and State MR Facility Responsibilities) contained in Subchapter F (relating to Continuity of Services--State Mental Retardation Facilities);

(B) Section 9.167 of this title (relating to Permanency Planning Reviews) contained in Chapter 9, Subchapter D (relating to Home and Community-based Services (HCS) Program); and

(C) Section 9.250 of this title (relating to Permanency Planning Reviews) contained in Chapter 9, Subchapter E (relating to ICF/MR Programs--Contracting).

§2.311. Provision and Oversight of General Revenue Services.

(a) An MRA is responsible for ensuring the provision of and overseeing an array of general revenue services described in the performance contract that is responsive to the needs of its local service area.

(b) An MRA must have policies and procedures that ensure on-going assessments are conducted for an individual, and general revenue services in the individual's plan of services and supports are coordinated and monitored in accordance with §2.556 of this chapter (relating to MRA's Responsibilities) and §2.561 of this chapter (relating

to Documentation of Service Coordination) contained in Subchapter L (relating to Service Coordination for Individuals with Mental Retardation).

(c) An MRA must have policies and procedures related to respite (in-home, facility-based, or both) funded by general revenue that:

- (1) encourage the use of existing local providers of respite;
- (2) encourage participation by the individual and LAR or actively involved person in the choice of a qualified provider of in-home respite;
- (3) describe how in-home respite providers are selected and trained;
- (4) describe how emergency backup for in-home respite providers is provided;
- (5) address admission procedures; and
- (6) require development of a respite plan prior to the delivery of respite except in an emergency.

§2.313. Health, Safety, and Rights.

(a) Protection of rights. An MRA must develop policies and procedures that protect the rights of individuals and are consistent with Chapter 4, Subchapter C of this title (relating to Rights of Individuals with Mental Retardation).

(b) Restrictions and limitations placed on an individual.

(1) An MRA:

(A) may implement behavioral support that involves restrictions or limitations placed on an individual only in accordance with paragraph (2) of this subsection and subsection (e) of this section;

(B) must comply with subsection (f) of this section when using restraint, and for restraint used under subsection (f)(2)(A) or (B) of this section, also comply with paragraph (2) of this subsection; and

(C) may place another type of restriction or limitation on an individual only if:

(i) the restriction or limitation protects the individual's health or safety that is jeopardized by an identified behavior; and

(ii) the MRA complies with paragraphs (2) and (3) of this subsection.

(2) An MRA must ensure that any restriction or limitation placed on an individual, except for a restraint used under subsection (f)(2)(C) of this section, is reviewed and approved by the rights protection officer and, at the discretion of the MRA, other appropriate staff members who are not on the individual's planning team, before the restriction or limitation is implemented. If a restriction or limitation is implemented in an emergency, including a behavioral emergency, the MRA must notify the rights protection officer as soon as possible after implementation.

(3) If a restriction or limitation not required to be in a behavioral support plan is approved in accordance with paragraph (2) of this subsection, the individual's plan of services and supports must:

- (A) include the restriction or limitation;
- (B) identify the circumstances or criteria to be met that will result in the removal of the restriction or limitation; and

(C) require the planning team to review the restriction or limitation, as necessary but at least annually, to determine appropriateness.

(c) Medication practices. An MRA's policies and procedures relating to medication practices must:

(1) be consistent with accepted principles of practice and applicable state laws and regulations to ensure medication is administered safely and appropriately;

(2) be approved in writing by a physician or registered nurse; and

(3) address:

(A) proper handling, storage, and disposal of medications;

(B) proper use of telephone orders if the MRA allows for telephone orders;

(C) administration of medications by staff members licensed or authorized to administer medications if the MRA allows for administration of medications;

(D) supervision of self-administration of medication by an individual; and

(E) documentation of follow-up and corrective action when medication errors occur.

(d) Informed consent for psychoactive medication. Except as provided by paragraph (2) of this subsection, a physician employed or contracted by an MRA may prescribe psychoactive medication for an individual only if the individual or LAR has given written informed consent for the medication.

(1) In seeking informed consent for a psychoactive medication, the prescribing physician must provide the individual and LAR:

(A) an explanation of the medication and its purposes;

(B) the expected beneficial effects, side effects, and risks of the medication;

(C) the probable consequences of not taking the medication;

(D) the existence and value of alternative forms of treatment, if any, and why the physician does not recommend the alternative treatment;

(E) instruction that the individual or LAR may withdraw consent at any time without negative repercussions by a staff member or prejudicing the future provision of services;

(F) an opportunity to ask questions concerning the medication and its use; and

(G) the time period, not to exceed one year, for which the individual's or LAR's consent will be effective.

(2) If an individual or LAR gives informed consent for a psychoactive medication but is physically unable to document the consent in writing, the prescribing physician must document in the individual's record that informed consent was given and the reason such consent was not documented by the individual or LAR.

(3) Prior to changing an individual's medication regimen that would result in a change of medication class or in a significant change in the benefits, side effects, or risks to the individual, the physician must obtain written informed consent from the individual or LAR in accordance with this subsection.

(e) Behavioral support.

(1) An MRA's policies and procedures related to behavioral support must include:

(A) the accepted standards of professional practice for the use of behavioral support, including the use of interventions during a behavioral emergency; and

(B) a requirement that only the following professionals may develop a behavioral support plan:

(i) a licensed psychologist licensed by the Texas State Board of Examiners of Psychologists or a qualified person under the supervision of a licensed psychologist;

(ii) a psychological associate licensed by the Texas State Board of Examiners of Psychologists or a qualified person under the supervision of a licensed psychological associate;

(iii) a behavior analyst certified by the Behavior Analyst Certification Board, Inc. or a qualified person under the supervision of a certified behavior analyst; or

(iv) a DADS-certified psychologist certified in accordance with §5.161 of this title (relating to TDMHMR-Certified Psychologist).

(2) Except as provided by paragraph (4) of this subsection, behavioral support interventions that involve restrictions or limitations placed on an individual or the use of intrusive techniques may only be provided in accordance with an approved written behavioral support plan. The behavioral support plan must:

(A) be based on:

(i) a functional assessment of the individual's behavior targeted by the plan; and

(ii) input from the individual's planning team and other professionals, as appropriate;

(B) describe the interventions to be used that are appropriate to the severity of the behavior targeted by the plan;

(C) be consistent with the outcomes identified in the individual's plan of services and supports;

(D) be approved by the individual's planning team prior to implementation;

(E) be accepted by the individual or LAR as evidenced by the individual's or LAR's written informed consent;

(F) provide for the collection of behavioral data concerning the targeted behavior; and

(G) require the professional who developed the plan to:

(i) educate the individual and LAR and other persons identified by the planning team (for example, family members and providers) regarding the purpose, objectives, methods and documentation of the behavioral support plan and subsequent revisions of the plan;

(ii) monitor and evaluate the success of the behavioral support plan implementation as required by the plan;

(iii) review, with other members of the individual's planning team, the behavioral support plan at least annually, or more often as indicated, to determine the effectiveness of the plan; and

(iv) revise the plan as necessary, based on documented outcomes of the plan's implementation.

(3) In obtaining informed consent as required by paragraph (2)(E) of this subsection, the professional who developed that plan must provide the individual or LAR:

(A) a description of the interventions to be used in the behavioral support plan;

(B) the expected beneficial effects and risks of the interventions;

(C) the probable consequences of not using the interventions;

(D) the existence and value of alternative interventions, if any, and why the professional does not recommend the alternative interventions;

(E) oral and written notification that the individual or LAR may withdraw consent for the behavioral support plan at any time without negative repercussions by a staff member or prejudicing the future provision of services;

(F) an opportunity to ask questions concerning the behavioral support plan; and

(G) the time period, not to exceed one year, for which the individual's or LAR's consent will be effective.

(4) An MRA may implement behavioral support that involves restrictions or limitations placed on an individual or the use of intrusive techniques without a behavioral support plan if the support is in response to a behavioral emergency. If such behavioral support is implemented more than twice during two consecutive months, the MRA must conduct a functional assessment to determine if a behavioral support plan is needed to reduce the frequency and severity of the behaviors exhibited during the behavioral emergency.

(f) Restraint.

(1) An MRA must have and implement a curriculum that ensures staff members are trained in the prevention and management of aggressive behavior. The curriculum must be consistent with the requirements of this subsection.

(2) A staff member may use restraint only under the following circumstances:

(A) in a behavioral emergency;

(B) as part of a behavioral support plan that addresses inappropriate behavior exhibited voluntarily by an individual; or

(C) in accordance with an order for the restraint from a physician, dentist, occupational therapist, or physical therapist.

(3) A staff member is prohibited from using restraint:

(A) in a manner that:

(i) obstructs the individual's airway, including the placement of anything in, on, or over the individual's mouth or nose;

(ii) impairs the individual's breathing by putting pressure on the individual's torso; or

(iii) places the individual in a prone or supine position;

(B) for disciplinary purposes (that is, for retaliation or retribution);

(C) for the convenience of a staff member or other individuals; or

(D) as a substitute for effective treatment or habilitation.

(4) If restraint will be used as part of a behavioral support plan, the planning team must:

(A) with the involvement of a physician or registered nurse, identify and document:

(i) the individual's known physical or medical conditions that might constitute a risk to the individual during the use of restraint;

(ii) the individual's ability to communicate; and

(iii) other factors, such as the individual's:

(I) cognitive functioning level;

(II) height;

(III) weight;

(IV) emotional condition, including whether the individual has a history of having been physically or sexually abused; and

(V) age; and

(B) review and update with a physician or registered nurse, at least annually or when a condition or factor documented in accordance with paragraph (4)(A) of this subsection changes significantly.

(5) If restraint is used in a behavioral emergency more than twice during two consecutive months, the planning team must ensure a functional assessment of the individual is conducted to determine if a behavioral support plan is needed to reduce the frequency and severity of the behaviors exhibited during the behavioral emergency.

(6) If a staff member restrains an individual in accordance with paragraph (2) of this subsection, the staff member must:

(A) use the minimal amount of force or pressure that is reasonable and necessary to ensure the safety of the individual and others;

(B) safeguard the individual's dignity, privacy, and well-being; and

(C) not secure the individual to a stationary object while the individual is in a standing position.

(7) If a staff member restrains an individual in accordance with paragraph (2)(A) or (B) of this subsection, the staff member may only use a restraint hold in which the individual's limbs are held close to the body to limit or prevent movement and that is in compliance with paragraph (3)(A) of this subsection.

(8) A staff member must release an individual from restraint:

(A) as soon as the individual no longer poses a risk of imminent physical harm to the individual or others; or

(B) as soon as possible if the individual in restraint experiences a medical emergency, as indicated by the medical emergency.

(9) After restraining an individual in a behavioral emergency, a staff member must:

(A) as soon as possible but no later than one hour after the use of restraint, notify a registered nurse, licensed vocational nurse, or a professional identified in subsection (e)(1)(B) of this section of the restraint;

(B) ensure that medical services are obtained for the individual as necessary; and

(C) discuss the circumstances of the restraint with a professional identified in subsection (e)(1)(B) of this section.

§2.315. MRA Administrative Functions.

(a) In-Home and Family Support Program--Mental Retardation. An MRA must administer the In-Home and Family Support Program--Mental Retardation in accordance with Chapter 1, Subchapter I of this title (relating to TDMHMR In-Home and Family Support Program) and the performance contract.

(b) Local planning.

(1) An MRA must conduct local planning in accordance with THSC, §533.0352, and ensure involvement of the local advisory committee and other stakeholders.

(2) An MRA must participate in the local CRCG when an individual has complex needs and requires multiagency services.

(3) An MRA must coordinate with local agencies to build an integrated service delivery system which ensures broad access to and information about community services, identifies the MRA's safety net functions, and maximizes the utilization of existing resources while avoiding duplication of effort and gaps in services.

(c) Quality management. An MRA must develop a quality management program to monitor the performance of general revenue services providers and the MRA's compliance with the performance contract.

(d) Utilization management. An MRA must have:

(1) procedures describing how it authorizes general revenue services; and

(2) methods for evaluating the effectiveness of the authorization procedures.

(e) Information systems. An MRA must have information systems that:

(1) capture valid and reliable data; and

(2) accurately report required data to funding sources (for example, the Medicaid administration contractor, DADS, and other state and local agencies).

(f) Network management. An MRA must develop and manage a network of qualified providers that offer the array of general revenue services described in the performance contract.

(1) If the MRA is a provider of general revenue services, the MRA must have written procedures describing the qualifications and expectations of staff members.

(2) If a provider of general revenue services is a contractor of the MRA, the MRA must:

(A) ensure the contract is procured and complies with the requirements of Subchapter B of this chapter (relating to Contracts Management for Local Authorities);

(B) have a process for resolving complaints from contract providers; and

(C) provide appropriate technical assistance and training to ensure contract providers understand their contractual obligations (for example, documentation and billing).

(g) Consideration of public input, ultimate cost-benefit, and client care issues. In accordance with THSC, §533.035(c) an MRA

must consider public input, ultimate cost-benefit, and client care issues to ensure individual choice and the best use of public money in:

(1) assembling a network of general revenue services providers;

(2) making recommendations relating to the most appropriate and available treatment alternatives for individuals in the need of services and supports; and

(3) procuring services for a local service area, including a request or proposal or open-enrollment procurement method.

(h) Interest list management.

(1) An MRA must contact individuals on the HCS Program interest list annually as required by and in accordance with the performance contract.

(2) An MRA must have policies and procedures for registering individuals on the MRA's interest list for general revenue services and annually contacting them in accordance with the performance contract.

(i) Qualifications and availability of staff members.

(1) Criminal history and registry clearances. An MRA must conduct criminal history and registry clearances for job and volunteer applicants in accordance with Chapter 4, Subchapter K of this title (relating to Criminal History and Registry Clearances).

(2) Availability of staff members. An MRA must ensure the continuous availability of trained and qualified staff members to ensure the provision of service coordination and general revenue services.

(3) Qualifications of a staff member who is a service coordinator. An MRA must ensure a staff member who is a service coordinator meets the qualifications set forth in §2.559 of this chapter (relating to Minimum Qualifications) contained in Subchapter L (relating to Service Coordination for Individuals with Mental Retardation).

(4) Qualifications of a staff member other than a service coordinator.

(A) An MRA must ensure that a staff member who is not a service coordinator and who directly provides general revenue services is at least 18 years of age and:

(i) has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(ii) has documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(I) written competency-based assessment of the ability to document service delivery and observations of an individual; and

(II) at least three personal references from persons not related by blood or marriage that indicate the ability to provide a safe, healthy environment for an individual.

(B) An MRA must:

(i) document the required education and work experience for a staff member who is not a service coordinator and who directly provides general revenue services and the supervisor of such staff member by position classification, by position category, or by individual position; and

(ii) ensure that a supervisor of a staff member who is not a service coordinator and who directly provides general revenue services has a minimum of one year experience working directly with

people with mental retardation or other developmental disabilities (for example, work experience, volunteer experience, or personal experience as a family member).

(C) An MRA must ensure that a staff member who is not a service coordinator and who directly provides general revenue services and the supervisor of such staff member have required state certification or licensure.

(5) Required competencies and skills relating to health, safety, and support needs of individuals.

(A) An MRA must identify in writing the required competencies and skills for a staff member by position classification, position category, or individual position that meet the health, safety, and support needs of individuals and include:

(i) timeframes and frequency for the staff member to demonstrate competency; and

(ii) a method for measuring the competency and skills of the staff member.

(B) An MRA must maintain documentation that a staff member has demonstrated competencies and skills required by subparagraph (A) of this paragraph.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 16, 2008.

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Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 31, 2008

For further information, please call: (512) 438-3734



SUBCHAPTER H. STANDARDS AND QUALITY ASSURANCE FOR MENTAL RETARDATION COMMUNITY SERVICES AND SUPPORTS

40 TAC §§2.351 - 2.373

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, §533.0355, which provides that the HHSC executive commissioner shall adopt rules establishing the role and responsibilities of local mental retardation authorities; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding

rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, Texas Health and Safety Code, §533.0355, and Texas Human Resources Code, §161.021.

- §2.351. *Purpose.*
- §2.352. *Application.*
- §2.353. *Definitions.*
- §2.354. *Responsibilities of Local MRAs and Designated Providers.*
- §2.355. *Self-assessment by Local MRAs and Designated Providers.*
- §2.356. *Outcome Measures for People.*
- §2.357. *Outcome Measures for Organizations.*
- §2.358. *Quality Improvement Plan.*
- §2.359. *External Validation.*
- §2.360. *Encouraging Full Expression of Legal and Civil Rights.*
- §2.361. *Human Resources.*
- §2.362. *Medication Practice and Health Related Services.*
- §2.363. *Infection Control.*
- §2.364. *Behavior Management.*
- §2.365. *Psychoactive Medications.*
- §2.366. *Consumer Records.*
- §2.367. *Environmental Requirements.*
- §2.368. *Respite Services.*
- §2.369. *Additional Requirements.*
- §2.370. *Exhibits.*
- §2.371. *Training.*
- §2.372. *References.*
- §2.373. *Distribution.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Marianne Reat

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CHAPTER 16. PILOT PROGRAM TO INCREASE THE USE OF ADVANCE DIRECTIVES IN NURSING FACILITIES AND INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION

40 TAC §§16.1 - 16.4

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability

Services (DADS), new Chapter 16, consisting of §§16.1 - 16.4, concerning a pilot program to increase the use of advance directives in nursing facilities and intermediate care facilities for persons with mental retardation.

BACKGROUND AND PURPOSE

The purpose of the new sections is to establish rules governing a pilot program to increase the use of advance directives in intermediate care facilities for persons with mental retardation (ICFs/MR) and nursing facilities (NFs) by educating residents and their families about advanced care planning, as directed by Senate Bill 27, 80th Legislature, Regular Session, 2007. The pilot program must implement an educational process that includes: (1) the legal issues associated with advanced directives; (2) the health care choices available to a person with terminal or irreversible condition; (3) the proper completion of advanced directives; and (4) the importance of discussing advanced directives with family, friends, advisors, and healthcare professionals.

SECTION-BY-SECTION SUMMARY

Proposed new §16.1 describes the purpose and the topics that must be included in the educational process.

Proposed new §16.2 contains the definitions for the chapter.

Proposed new §16.3 describes the location and time frame of the pilot program.

Proposed new §16.4 provides a description of the pilot program.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed new sections are in effect, enforcing or administering the new sections does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new sections will not have an adverse economic effect on small businesses or micro-businesses, because the new rules do not add any new requirements for such businesses.

PUBLIC BENEFIT AND COSTS

Jon Weizenbaum, DADS Deputy Commissioner, has determined that, for each year of the first five years the new sections are in effect, the public benefit expected as a result of enforcing the new sections is that DADS will create additional opportunities for educating residents and their families about advanced care planning.

Mr. Weizenbaum anticipates that there will not be an economic cost to persons who are required to comply with the new sections. The new sections will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Gerardo Cantu at (512) 438-3693 in DADS' Center for Policy and Innovation. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-028, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to rulescomments@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be either: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 028" in the subject line.

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new sections implement Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§16.1. Purpose.

This chapter establishes a pilot program mandated by Senate Bill 27, 80th Legislature, Regular Session, 2007, and developed by the Department of Aging and Disability Services to increase the use of advance directives in ICFs/MR and NFs by educating residents and their families about advanced care planning. The pilot program educates residents and their families about:

- (1) the legal issues associated with advance directives;
- (2) the health care choices available to a person with a terminal or irreversible condition;
- (3) the proper completion of advance directives; and
- (4) the importance of discussing advance directives with family, friends, advisors, and healthcare providers.

§16.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

- (1) Advance care planning--A process that ensures an individual's health care decisions are carried out if the individual becomes incapacitated due to health conditions.
- (2) Advance directive--As defined in Texas Health and Safety Code, §166.02:

(A) a directive, as defined in Texas Health and Safety Code, §166.031, to administer, withhold, or withdraw life-sustaining treatment in the event of a terminal or irreversible condition;

(B) an out-of-hospital do-not-resuscitate order, as defined in Texas Health and Safety Code, §166.081; or

(C) a medical power of attorney under Texas Health and Safety Code, Chapter 166, Subchapter D.

(3) ICF/MR--An intermediate care facility for persons with mental retardation, as defined in Texas Health and Safety Code, §531.002.

(4) Nursing facility--An institution licensed as a nursing home under Texas Health and Safety Code, Chapter 242.

§16.3. Pilot Location and Time Frame.

(a) The pilot program includes all NFs and ICFs/MR (other than a state mental retardation facility operated by DADS) located in Bell and McLennan Counties in Texas.

(b) The pilot program begins on October 1, 2008, and ends on June 30, 2010, unless extended by law. DADS may extend or expand the education process after the end of the program.

§16.4. Description of the Pilot Program.

(a) An NF or ICF/MR (other than a state MR facility) located in Bell or McLennan County must participate in the pilot program described in this chapter.

(b) A facility must distribute training materials developed by DADS to educate individuals and their families about advance care planning.

(c) A facility must provide information requested by DADS at a frequency determined by DADS.

(d) DADS trains nursing facility and ICF/MR staff on how to use the training materials and how to collect and submit information requested by DADS.

(e) DADS provides no additional funding to a facility participating in the pilot program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Marianne Reat

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Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



CHAPTER 41. CONSUMER DIRECTED SERVICES OPTION

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §41.307, concerning initial orientation of an employer; and §41.407, concerning termination of participation in the consumer directed services option (CDS) option, in Chapter 41, Consumer Directed Services Option.

BACKGROUND AND PURPOSE

One purpose of the proposal is to update DADS rules to reflect the HHSC Rate Analysis Department's revised rate setting methodology approved by the Centers for Medicare and Medicaid Services. The proposed rules delete a reference to the previous payment methodology, which is no longer applicable.

In addition the proposal repeals the section of the rule that allows a service planning team to terminate participation in the CDS option of an individual service recipient who is convicted for an offense that bars employment. The individual service recipient in CDS is an employer and not an employee so the employment prohibition is not applicable.

SECTION-BY-SECTION SUMMARY

The amendment to §41.307 deletes rule language that allows a CDSA to bill an individual for an orientation fee if the individual does not enroll with the CDSA, terminates the CDS option, or transfers to another CDSA.

The amendment to §41.407 removes a provision that makes an individual service recipient eligible for termination in the CDS option if the individual acting as an employer has been convicted of a barrable offense.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses, because the amendments do not impose any additional requirements on providers.

PUBLIC BENEFIT AND COSTS

Barry Waller, DADS Assistant Commissioner for Provider Services, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is that DADS' CDS rules will reflect current CMS rate determination methodology and clarify who is required to have a criminal history check.

Mr. Waller anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Elizabeth Jones at (512) 438-4855 in DADS' Provider Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-009, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to rulescomments@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of

the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be either (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 009" in the subject line.

SUBCHAPTER C. ENROLLMENT AND RESPONSIBILITIES OF CONSUMER DIRECTED SERVICES AGENCIES

40 TAC §41.307

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§41.307. Initial Orientation of an Employer.

(a) - (c) (No change.)

[(d) After an initial orientation, the CDSA may bill the orientation fee at the current rate schedule to the individual's service plan, within 90 days after the initial orientation, if the individual:]

[(1) does not enroll with the CDSA;]

[(2) terminates the CDS option; or]

[(3) transfers to another CDSA.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 16, 2008.

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Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 31, 2008

For further information, please call: (512) 438-3734



SUBCHAPTER D. ENROLLMENT, TRANSFER, SUSPENSION, AND TERMINATION

40 TAC §41.407

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§41.407. Termination of Participation in the CDS Option.

(a) - (c) (No change.)

(d) An individual's case manager or service coordinator convenes the individual's service planning team concerning issues that may warrant immediate termination of the individual's participation in the CDS option. On review of the information, the service planning team may recommend immediate termination of participation in the CDS option when:

(1) (No change.)

(2) the ~~[employer or]~~ DR has been convicted of an offense under Chapter 32 of the Penal Code or an offense barring employment as listed in the Texas Health and Safety Code, §250.006(a) and (b); or

(3) (No change.)

(e) - (k) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 16, 2008.

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Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



CHAPTER 43. SERVICE RESPONSIBILITY OPTION

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new Chapter 43, Service Responsibility Option (SRO), consisting of Subchapter A, §§43.1 - 43.4, concerning introduction; Subchapter B, §§43.11 - 43.19, concerning responsibilities of individuals choosing to participate in the SRO; Subchapter C, §43.21 and §43.22, concerning responsibilities of an SRO provider; Subchapter D, §§43.31 - 43.33, concerning termination of the SRO; Subchapter E, §43.41 and §43.42, concerning support consultation; Subchapter F, §43.51, concerning budget; Subchapter G, §43.61, concerning reporting allegations; and Subchapter H, §43.71, concerning oversight.

BACKGROUND AND PURPOSE

The purpose of the new sections is to govern the service responsibility option (SRO). Senate Bill 1766 (80th Legislature, Regular Session, 2007) amended Texas Government Code, §531.051, to add the SRO to the array of service delivery options for community services to allow an individual service recipient to exercise greater control over the development and implementation of the individual service recipient's service plan.

The SRO is a service delivery option in which an individual service recipient or an individual service recipient's representative, who wants some control over service providers but may not want to assume all employer responsibilities required by the consumer directed services (CDS) option, selects, trains, and supervises a service provider, while payroll and personnel functions remain with an SRO provider. The proposal provides eligible individual service recipients with more opportunities for self-direction.

SECTION-BY-SECTION SUMMARY

Proposed new §43.1 provides an introduction to the requirements in the chapter.

Proposed new §43.2 describes the people and entities governed by the chapter.

Proposed new §43.3 provides an overview of the SRO and states that DADS offers the SRO and the CDS option to an individual service recipient at the same time.

Proposed new §43.4 provides the definitions for the chapter.

Proposed new §43.11 contains the requirements that a case manager, service coordinator, or other person designated by an individual service recipient's program must follow when the individual enrolls in a DADS program that offers the SRO.

Proposed new §43.12 describes service planning in the SRO and contains the requirements of a service plan.

Proposed new §43.13 requires an individual service recipient or legally authorized representative (LAR) to complete an SRO orientation and describes the topics to be discussed and the forms that must be completed at an SRO orientation.

Proposed new §43.14 requires an individual service recipient or LAR to present an SRO provider with a service back-up plan and contains the steps an individual service recipient must follow if a service provider is unable to provide services.

Proposed new §43.15 contains the requirements for a management agreement.

Proposed new §43.16 describes how service providers are selected.

Proposed new §43.17 describes service provider orientation training and describes the required documentation an individual service recipient must complete.

Proposed new §43.18 describes the responsibilities of an individual service recipient who chooses to participate in the SRO, including the requirements an individual service recipient must follow to ensure a service provider is following a service plan.

Proposed new §43.19 describes suspension and evaluation requirements.

Proposed new §43.21 contains the requirements for a provider to become an SRO provider.

Proposed new §43.22 describes SRO provider responsibilities, including assisting an individual service recipient to select and train service providers.

Proposed new §43.31 allows an individual service recipient to request voluntary termination of participation in the SRO.

Proposed new §43.32 describes the circumstances in which a case manager or service coordinator may involuntarily terminate an individual service recipient's participation in the SRO.

Proposed new §43.33 describes the circumstances in which an individual service recipient's participation in the SRO may be immediately and involuntarily terminated.

Proposed new §43.41 describes support consultation and what support consultation must include.

Proposed new §43.42 describes the responsibilities and service requirements of a support advisor.

Proposed new §43.51 describes budget and service provider payment in the SRO.

Proposed new §43.61 requires a person to whom this chapter applies to report any suspicion or knowledge of abuse, neglect, or exploitation of an individual in accordance with existing state laws and DADS rules.

Proposed new §43.71 describes the people and entities over which DADS provides oversight.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed new sections are in effect, enforcing or administering the new sections does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new sections will not have an adverse economic effect on small businesses or micro-businesses, because the new sections add SRO as a service delivery option for individuals and providers but do not add any new requirements for small businesses or micro-businesses.

PUBLIC BENEFIT AND COSTS

Barry Waller, DADS Assistant Commissioner for Provider Services has determined that, for each year of the first five years the new sections are in effect, the public benefit expected as a result of enforcing the new sections is that the SRO will be available to individuals who wish to participate and will allow individuals more opportunities for self-direction.

Mr. Waller anticipates that there will not be an economic cost to persons who are required to comply with the new sections. The new sections will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Elizabeth Jones at (512) 438-4855 in DADS' Provider Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-009, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin,

TX 78751; faxed to (512) 438-5759; or e-mailed to rulescomments@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be either (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 009" in the subject line.

SUBCHAPTER A. INTRODUCTION

40 TAC §§43.1 - 43.4

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§43.1. Introduction.

This chapter describes:

- (1) the SRO available to an individual or the individual's LAR;
- (2) the process for enrollment and participation of an individual in the SRO;
- (3) the responsibilities and requirements of an individual, LAR, or representative participating in the SRO;
- (4) the responsibilities and requirements of a person or entity providing services under the SRO; and
- (5) the people and entities DADS oversees in the SRO.

§43.2. Application.

This chapter applies to the following:

- (1) an individual or LAR who elects to manage services delivered through the SRO;
- (2) a representative;
- (3) an SRO provider;
- (4) a support advisor;
- (5) a service provider; and
- (6) a case manager or service coordinator.

§43.3. Overview of the SRO.

(a) SRO is a service delivery option available to an individual or LAR who wants some control over the individual's service providers but does not want to assume all employer responsibilities, as required by the CDS option.

(b) In the SRO, the individual, LAR, or representative selects, trains, and supervises a service provider, while payroll and personnel functions remain with the SRO provider.

(c) DADS offers the SRO at the same time as the CDS option.

§43.4. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

(1) Adult--A person who is 18 years of age or older.

(2) Applicant--Depending on the context, an applicant is:

(A) a person applying for employment with an SRO provider;

(B) a person or legal entity applying for a contract with an SRO provider to deliver services to an individual; or

(C) a person applying for services through a program.

(3) Case manager--A person who provides case management services to an individual. The case manager assists an individual who receives program services in gaining access to needed services, regardless of the funding source for the services, and assists with other duties as required by the individual's program.

(4) CDSA--Consumer directed services agency. A provider contracting with DADS that provides financial management services.

(5) CDS option--Consumer Directed Services option. A service delivery option in which an individual or LAR employs and retains service providers and directs the delivery of program services as described in Chapter 41 of this title (relating to Consumer Directed Services Option).

(6) DADS--The Department of Aging and Disability Services.

(7) Entity--An organization that has a legal identity such as a corporation, limited partnership, limited liability company, professional association, or cooperative.

(8) Individual--A person enrolled in a program.

(9) LAR--Legally authorized representative. A person authorized or required by law to act on behalf of an individual with regard to a matter described in this chapter, including a parent, guardian, managing conservator of a minor, or the guardian of an adult.

(10) Management agreement--A negotiated agreement between an individual and an SRO provider that establishes each party's responsibilities to create and sustain quality services. A management agreement also establishes a schedule for the individual or LAR and the SRO provider to meet to assess the individual's well-being and the quality of services provided.

(11) Program--A community services program administered by DADS.

(12) Provider--An entity that has a contract with DADS to provide program services.

(13) Representative--A willing adult who volunteers to assist an individual or LAR with selection, training, and daily management of a service provider.

(14) Service back-up plan--A documented plan to ensure that critical program services delivered through the SRO are provided to an individual when normal service delivery is interrupted or there is an emergency.

(15) Service coordinator--An employee of a mental retardation authority who is responsible for assisting an applicant, individual, or LAR to access needed medical, social, educational, and other appropriate services, including program services. A service coordinator provides case management services to an individual.

(16) Service plan--A document developed in accordance with rules governing an individual's program to identify the program services to be provided to the individual, the number of units of each service to be provided, and the projected cost of each service.

(17) Service planning team--A group of people determined by the requirements of an individual's program that meet to discuss and make decisions or recommendations regarding an individual's program services. Some programs refer to the service planning team as an interdisciplinary team.

(18) Service provider--An employee, contractor, or vendor of the SRO provider.

(19) SRO--Service responsibility option. A service delivery option in which an individual or LAR selects, trains, and provides daily management of a service provider, while the fiscal, personnel, and service back-up plan responsibilities remain with an SRO provider.

(20) SRO orientation--A mandatory training provided by a support advisor to inform an individual or LAR about SRO responsibilities and tools to use for successful management of the SRO.

(21) SRO provider--A provider who volunteers to enroll as an SRO provider and amend its program services contract to allow an individual receiving one or more services from the provider to have a service delivered through SRO.

(22) Support advisor--A person who provides support consultation to an employer, representative, or individual receiving services through the SRO.

(23) Support consultation--A service provided by a support advisor that provides the required SRO orientation and additional support when needed by the individual to effectively carry out responsibilities under the SRO. Support consultation helps an individual or LAR meet the required daily management responsibilities of the SRO.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 16, 2008.

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Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 31, 2008

For further information, please call: (512) 438-3734



SUBCHAPTER B. RESPONSIBILITIES OF INDIVIDUALS CHOOSING TO PARTICIPATE IN THE SRO

40 TAC §§43.11 - 43.19

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provi-

sion of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§43.11. Enrollment in the SRO.

(a) At the time an individual chooses to participate in the SRO, and, at least annually thereafter, a case manager, service coordinator, or other person designated by the individual's program must:

(1) provide the individual or LAR a copy of DADS' Service Responsibility Option Roles and Responsibilities form, the *It's Your Choice* brochure, and DADS' Acknowledgement of Information Regarding Support Consultation Services in the Consumer Directed Services (CDS) Option form;

(2) provide an oral explanation of the information contained in the Service Responsibility Option Roles and Responsibilities and Acknowledgement of Information Regarding Support Consultation Services in the Consumer Directed Services (CDS) Option forms to the applicant or LAR;

(3) document the individual's choice on DADS' Consumer Participation Choice form;

(4) present the SRO provider list and the support advisor list to the individual;

(5) instruct the individual to contact the selected support advisor within one day after the individual signs DADS' Consumer Participation Choice form; and

(6) document the individual's SRO provider and support advisor on DADS' Consumer Participation Choice form.

(b) An individual or LAR may request that a case manager, service coordinator, or other person designated by the individual's program provide additional information to the individual or LAR regarding the SRO or assist with enrollment in the SRO at any time. The case manager, service coordinator, or designee must comply within five working days after receipt of the request.

(c) An individual or LAR who initially declines participation may elect to participate in the SRO at any time if the individual's program offers the SRO.

(d) The case manager or service coordinator will notify the SRO provider in the same manner as a program provider is notified of selection as directed by program rules and policy.

§43.12. Service Planning in the SRO.

(a) A case manager, service coordinator, or other person designated by the individual's program completes service planning in the SRO in the same manner as services delivered through a program provider.

(b) A service plan must identify and document:

- (1) an individual's services;
- (2) an individual's service needs;
- (3) an individual's service levels;

(4) changes to the service plan, including an explanation of a change;

(5) that the service plan does not exceed the individual's costs caps and cost limits; and

(6) the approval for planned services.

§43.13. SRO Orientation.

(a) Upon choosing to participate in the SRO and before the first meeting with an SRO provider, an individual or LAR must complete the SRO orientation.

(b) During the SRO orientation, the individual or LAR must complete:

(1) DADS' *SRO Self-Assessment Checklist* to identify additional training and other support needed to ensure the individual's success in daily management of services;

(2) DADS' *SRO Roles and Responsibilities Agreement*;

(3) DADS' *Planning For Success and the Risk Planning Checklist* to identify informal supports to be included in the individual's service back-up plan;

(4) a service back-up plan for critical services containing specific strategies, the sequence of activities, and service back-up plan contact information;

(5) a review of the resources available to an individual participating in the SRO;

(6) a review of the responsibility for potential liability if the individual or service provider is injured while doing tasks under the individual's training and supervision;

(7) a review of the management agreement that will be negotiated with the SRO provider;

(8) a checklist of the characteristics and skills an SRO provider will seek in a potential service provider; and

(9) documentation that an individual is choosing a representative and the specific management tasks the representative will assume.

(c) The individual or LAR must have the completed forms at the initial meeting with the SRO provider.

§43.14. Service Back-up Plan.

(a) At the initial meeting with the SRO provider, the individual or LAR presents the service back-up plan to the SRO provider that includes:

(1) specific back-up plan strategies;

(2) the specific steps to implement each strategy, including contact with the SRO provider; and

(3) the contact information for each person or entity listed in the service back-up plan.

(b) The SRO provider and the individual must mutually approve the service back-up plan.

(c) The individual must notify the SRO provider if the service provider is unable to provide services.

(d) If a service provider is unable to provide services, an individual must:

(1) implement the service back-up plan;

(2) request a back-up service provider from the SRO provider; or

(3) inform the SRO provider that services will not be needed.

§43.15. Management Agreement.

(a) At the initial meeting with an SRO provider, an individual or LAR and the SRO provider must negotiate a management agreement that establishes:

(1) the responsibilities of the individual and the SRO provider;

(2) how often quality assurance visits will occur; and

(3) how often quality assurance phone contacts will occur.

(b) The management agreement must be updated and documented at least annually.

(c) The meeting schedule specified in the management agreement replaces the program-required supervisory visits.

§43.16. Service Provider Selection.

(a) A potential service provider must pass the pre-employment screenings, including criminal history and registry checks, conducted by an SRO provider in order to be eligible to be selected as a service provider.

(b) An individual, LAR, or representative interviews and selects service providers who:

(1) have been recommended by the individual; or

(2) are currently employed by the SRO provider and match the skills and traits identified by the individual during the SRO orientation.

(c) The individual must notify the SRO provider of the individual's choice of service providers no later than one day following the last interview conducted.

(d) If the individual has not selected a service provider, and up to three potential service providers have been sent within the period prior to service initiation in accordance with the individual's program rules and policy, the case manager or service coordinator must call a service planning team meeting to determine what additional supports and education from the support advisor might help the individual select a service provider.

§43.17. Service Provider Orientation Training.

(a) At or before the time a service provider starts delivering services, an individual, LAR or representative must train the selected service provider on the specific manner in which the individual prefers the approved tasks in the service plan to be delivered.

(b) If negotiated with an individual, an SRO provider may assist with the service provider orientation in the individual's home.

(c) An individual must document the service provider orientation, including:

(1) the tasks to be performed;

(2) the training aspects specific to the needs of the individual;

(3) the date on which orientation was completed;

(4) any scheduled follow-up training to be conducted; and

(5) an evaluation of the orientation.

(d) The individual must provide documentation of the service provider orientation to the SRO provider within 14 calendar days after the completion of the orientation.

§43.18. Individual Responsibilities in the SRO.

(a) An individual, LAR, or representative who chooses to participate in the SRO serves as the daily manager of service delivery, including scheduling and managing a service provider.

(b) The individual who chooses to participate in the SRO must ensure the service provider is following the service plan, including:

(1) ensuring and verifying that the service provider does only the tasks listed in the service plan and works only the number of hours listed in the service plan;

(2) complying with SRO provider policies, including payroll policies;

(3) reviewing, approving, and signing service provider time sheets; and

(4) ensuring that the service provider submits time sheets to the SRO provider within the required time frames.

§43.19. Supervision and Evaluation.

An individual, LAR, or representative must:

(1) evaluate a service provider's job performance at the time designated by the SRO provider; and

(2) document and submit each performance evaluation to the SRO provider.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 16, 2008.

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Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 31, 2008

For further information, please call: (512) 438-3734



SUBCHAPTER C. RESPONSIBILITIES OF AN SRO PROVIDER

40 TAC §43.21, §43.22

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§43.21. Contracting as an SRO Provider.

To become an SRO provider, a provider must:

- (1) have a current program contract with DADS;
- (2) request a contract amendment to the program contract that allows an individual receiving one or more services from the provider to have a service delivered through SRO; and
- (3) have at least one person employed by the provider attend and complete the SRO training authorized by DADS.

§43.22. SRO Provider Responsibilities.

(a) At the initial meeting with an individual, an SRO provider must:

- (1) negotiate a management agreement with the individual;
- (2) discuss and approve a service back-up plan with the individual;
- (3) provide SRO provider time sheets to the individual and explain the submission process, including how frequently time sheets must be completed and submitted; and
- (4) orient the individual to the SRO provider's evaluation process, including forms and the schedule for evaluating service providers.

(b) During service provider selection, the SRO provider must:

- (1) screen a potential service provider, including conducting criminal history and registry checks required by an individual's program; and
- (2) send potential service providers, including those recommended by the individual, to the individual to interview.

(c) When the individual has selected a service provider, the SRO provider must:

- (1) explain the SRO to the service provider, including that the SRO provider is the employer of record and that the individual is the daily manager of services;
- (2) explain to the service provider that if the service provider has health or safety concerns about the individual and cannot resolve the issue after talking with the individual, the service provider must contact the SRO provider; and
- (3) provide basic training and orientation to service providers regarding universal precautions, SRO provider policies, complaint procedures, and emergency procedures.

(d) After services have begun, the SRO provider must:

- (1) receive and process time sheets from the service provider;
- (2) send a back-up service provider, within the time frame required by an individual's program, if requested by the individual or if the individual does not implement the service back-up plan; and
- (3) send new potential service providers, within the time frame required by an individual's program, to interview at the individual's request.

(e) The SRO provider must:

(1) notify a case manager or service coordinator of issues or concerns related to an individual's participation in the SRO:

(A) immediately if possible, but at least within 24 hours after becoming aware of:

- (i) allegations of abuse, neglect, exploitation, or fraud; or

(ii) concerns about the individual's health, safety, or welfare; and

(B) within seven days after becoming aware of:

(i) non-delivery of services or extended breaks in services;

(ii) noncompliance with SRO management responsibilities;

(iii) noncompliance with a service back-up plan; or

(iv) over- or under-utilization of services or funds allocated in the individual's service plan for delivery of services to the individual through the SRO and in accordance with the requirements of the individual's program; and

(2) document any issues or concerns related to an individual's participation in the SRO on DADS' Case Information form.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



SUBCHAPTER D. TERMINATION OF THE SRO

40 TAC §§43.31 - 43.33

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§43.31. Voluntary Termination of Participation in the SRO.

(a) An individual may request voluntary termination of participation in the SRO at any time.

(b) A case manager or service coordinator must terminate support consultation in the individual's service plan when participation in the SRO is terminated.

(c) The termination must last at least 90 calendar days before the individual may be considered for re-enrollment in the SRO.

§43.32. Involuntary Termination of Participation in the SRO.

(a) A case manager or service coordinator may involuntarily terminate an individual from participation in the SRO, in accordance with the requirements of the individual's program, in any of the following situations:

- (1) non-delivery of services or extended breaks in services;
- (2) noncompliance with SRO management responsibilities;
- (3) noncompliance with a service back-up plan; or
- (4) over- or under-utilization of services or funds allocated in the individual's service plan for delivery of services to the individual through the SRO and in accordance with the requirements of the individual's program.

(b) Before involuntarily terminating an individual from participation in the SRO, an individual's case manager or service coordinator must convene the individual's service planning team, including the support advisor, to:

- (1) provide assistance with accessing supports and developing and implementing a corrective action plan related to noncompliance with program and SRO requirements;
- (2) document interventions utilized by the individual, support advisor, or representative to eliminate noncompliance with program requirements for the management of program services through the SRO; and
- (3) consider options to:
 - (A) recommend additional interventions to be implemented under the guidance of the support advisor to protect the individual's health and welfare for continued participation in the SRO; or
 - (B) recommend termination of the SRO and ensure that services are provided through the program provider.
- (c) If an individual, LAR, or representative does not correct the issue identified in subsection (a) of this section that caused the service planning team to initiate the steps outlined in subsection (b) of this section, the individual's case manager or service coordinator involuntarily terminates the individual from participation in the SRO.

§43.33. Immediate Jeopardy and Involuntary Termination of Participation in the SRO.

(a) An individual's case manager or service coordinator must immediately convene the individual's service planning team concerning issues that may warrant immediate termination of the individual's participation in the SRO, including:

- (1) allegations of abuse, neglect, exploitation, or fraud; and
- (2) concerns about the individual's health, safety, or welfare.

(b) On review of the information, the service planning team may recommend immediate termination of participation in the SRO if the individual's health or welfare is jeopardized by the individual's participation in the SRO.

(c) If recommended by the service planning team, the case manager or service coordinator must terminate an individual's participation in SRO so that the individual receives services through a program provider.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Marianne Reat

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SUBCHAPTER E. SUPPORT CONSULTATION

40 TAC §43.41, §43.42

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§43.41. Support Consultation Services.

(a) Support consultation is provided by a person who meets the qualifications of a support advisor as described in Chapter 41 of this title (relating to Consumer Directed Services Option). A support advisor may be an employee or contractor of:

- (1) a CDSA; or
- (2) another entity.

(b) Support consultation must include:

- (1) a level of training, assistance, and support that does not duplicate or replace case management services, or another available program or non-program service or resource; and
- (2) practical skills training and assistance to successfully manage service providers for authorized program services delivered through the SRO.

§43.42. Support Advisor Responsibilities.

(a) A support advisor must conduct the initial SRO orientation. The support advisor must document and notify the SRO provider and case manager or service coordinator that the individual has completed the orientation before SRO services can begin.

(b) A support advisor must assist an individual, in accordance with the individual's service plan, with:

- (1) completing forms, assessments, and other documents required by the individual's program that require individual or LAR input or completion;
- (2) complying with requirements of the individual's program as related to services delivered through the SRO;
- (3) interviewing potential service providers, preparing job descriptions, and training service providers;

(4) managing service providers for authorized program services delivered through the SRO;

(5) helping an individual to use effective communication, decision-making, and problem-solving skills;

(6) developing, revising, and implementing service back-up plans;

(7) developing, revising, and implementing corrective action plans;

(8) complying with the requirements of the individual's program and this chapter;

(9) contacting appropriate persons or entities based on their roles, responsibilities, and eligibility, including:

(A) a case manager or service coordinator; and

(B) government agencies, including DADS and the Department of Family and Protective Services; and

(10) teaching ongoing supervisory-related skills.

(c) A support advisor must document service delivery in accordance with the requirements of the individual's program.

(d) A support advisor must use DADS' Case Notification form to notify an individual's case manager or service coordinator:

(1) if the individual receiving support consultation is unable or unwilling to cooperate with service delivery; and

(2) of the progress and status of the service as required by the individual's program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Marianne Reat

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SUBCHAPTER F. BUDGET

40 TAC §43.51

STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new section affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§43.51. Service Provider Payment in the SRO.

Payment rates for the SRO are the same rates determined for the program when services are delivered through a program provider.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER G. REPORTING ALLEGATIONS

40 TAC §43.61

STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new section affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§43.61. Reporting Allegations.

A person to whom this chapter applies must report any suspicion or knowledge of abuse, neglect, or exploitation of an individual in accordance with existing state laws and DADS rules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Marianne Reat

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SUBCHAPTER H. OVERSIGHT

40 TAC §43.71

STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new section affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§43.71. Oversight.

DADS oversees roles and responsibilities of the following:

- SRO:
- (1) an individual or LAR who chooses to participate in the
 - (2) a representative;
 - (3) a CDSA;
 - (4) a support advisor;
 - (5) an SRO provider;
 - (6) a case manager; and
 - (7) a service coordinator.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



CHAPTER 44. CLIENT MANAGED PERSONAL ATTENDANT SERVICES SUBCHAPTER B. RESPONSIBILITIES OF ALL PROVIDER AGENCIES DIVISION 6. CO-PAYMENT DETERMINA- TION

40 TAC §44.61

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §44.61, concerning co-payment determination and collection procedures, in Chapter 44, Client Managed Personal Attendant Services.

BACKGROUND AND PURPOSE

The purpose of the amendment is to update the guidelines for determining an individual's co-payment in the Client Managed Personal Attendant Services (CMPAS) Program. Currently, §44.61 contains a chart used to determine a co-payment amount, based on income, required for an individual to participate in the CMPAS Program. The proposal replaces this chart with a reference to the Community Care for Aged and Disabled (CCAD) Handbook, where the chart will be maintained and updated at least biennially. This change will not result in any individual being required to pay more for CMPAS.

SECTION-BY-SECTION SUMMARY

The amendment to §44.61 replaces a table that corresponds to the client's net monthly income with a reference to the co-pay schedule located in the CCAD Handbook.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses, because the amendment will not result in any new requirements for providers.

PUBLIC BENEFIT AND COSTS

Barry Waller, DADS Assistant Commissioner for Provider Services, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendments is that locating the co-payment schedule in the CCAD Handbook will allow DADS to keep the information more current and accurate.

Mr. Waller anticipates that there will not be an economic cost to persons who are required to comply with the amendment. The amendment will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Carol Griebel at (512) 438-3740 in DADS' Provider Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-005, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to rulescomments@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be either (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing

comments, please indicate "Comments on Proposed Rule 005" in the subject line.

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendment implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§44.61. How is a client's co-payment determined and what are the procedures for collecting the co-payment?

(a) A client's co-payment is a percentage of the monthly cost for services provided to the client. To arrive at a client's co-payment, a provider agency must:

(1) - (2) (No change.)

(3) determine the client's percentage amount by referencing the co-pay schedule located in the Community Care for Aged and Disabled handbook [finding the percentage amount in the right column of the following table that corresponds to the client's net monthly income]; [Figure: 40 TAC §44.61(e)]

(4) - (5) (No change.)

(b) - (c) (No change.)

(d) In collecting monthly co-payments, a provider agency must:

(1) (No change.)

(2) deduct the co-payment from reimbursement claims submitted to the Department of Aging and Disability Services [DHS] under §44.112 of this chapter (relating to How are provider agencies reimbursed?); and

(3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 17, 2008.

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Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



CHAPTER 90. INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability

Services (DADS), amendments to §90.15, concerning renewal procedures and qualifications; §90.19, concerning license fees; §90.192, concerning determinations and actions pursuant to inspections; §90.236, concerning administrative penalties; and §90.240, concerning right to correct, in Chapter 90, Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions.

BACKGROUND AND PURPOSE

The purpose of the amendments is to implement provisions of Senate Bill (SB) 1318 and SB 344, 80th Legislature, Regular Session, 2007. SB 1318 amended Texas Health and Safety Code, §252.034, to provide that a license holder who submits an application for license renewal later than the 45th day before the expiration of a current license is subject to a late fee in an amount equal to one-half of the basic renewal fee. SB 1318 also amended Texas Health and Safety Code, §252.065, to add violations for which DADS may assess an administrative penalty and for which DADS is not required to provide the facility time to correct prior to assessment of that penalty.

SB 344 amended Texas Health and Safety Code, §252.044, to require that DADS hold an exit conference in person if additional violations are identified after an initial exit conference. SB 344 also amended Texas Health and Safety Code, §252.044, to change the time period for a facility to submit a plan of correction for licensure violations from 10 calendar days to 10 working days after the facility receives a final, official statement of violations.

Additionally, the proposed amendments update rule language and terms and correct agency names and cross-references.

SECTION-BY-SECTION SUMMARY

The amendments to §§90.15, 90.19, and 90.192 update rule language and terms and correct agency names and cross-references.

The amendment to §90.15 states that the late renewal fee is provided in §90.19 and requires a license holder to pay the appropriate license fee upon submission of the renewal.

The amendment to §90.19 states that a license holder that submits an application for renewal during the 45-day period ending on the date the current license expires must pay a late renewal fee in an amount equal to one-half of the renewal fee described in §90.15(a)(1).

The amendment to §90.192 requires that DADS hold a second exit conference in person if additional violations are identified after an initial exit conference, changes the time period for a facility to submit a plan of correction for licensure violations from 10 calendar days to 10 working days, describes when DADS may assess an administrative penalty, and gives the assessment amounts for violations warranting an administrative penalty for which the facility is not given time to correct.

The amendment to §90.236 updates the administrative penalties chart.

The amendment to §90.240 updates requirements governing the right to correct.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have significant foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments may have an adverse economic effect on small businesses or micro-businesses, because the amendments allow DADS to charge late fees and administrative penalties.

DADS estimates that the number of small businesses and micro-businesses subject to the proposed amendments is less than 121. This estimate is based on DADS records, which indicate that 121 entities that have licenses to operate ICFs/MR are formed for the purpose of making a profit, one of the requirements for being a "small" or "micro" business. DADS does not have data regarding the number of employees and gross receipts to determine what percentage of these entities meet the definition of a small business or micro-business.

The projected economic impact for a small business or micro-business is a late fee in an amount equal to one-half of the total basic renewal fee in §90.19(a)(1). A small business or micro-business may also be subject to an administrative penalty ranging between \$500 and \$5000, as described in §90.236. The late fee and administrative penalty are incurred only if a small or micro-business does not comply with applicable rules. For that reason, DADS projects that there will be minimal economic impact to small or micro-businesses subject to these amendments.

Several alternatives were considered in determining how to accomplish the objectives of the proposed rules while minimizing the adverse economic effect on small businesses and micro-businesses. Statute allows DADS to determine the amount of the late fee and administrative penalties to be assessed in the amended rules. DADS considered imposing no fee or penalty at all for this type of non-compliance. However, failing to impose a penalty would not be consistent with DADS' responsibility as a regulatory agency (i.e., to protect the health and safety of facility residents by ensuring that facilities comply with these rules). DADS also considered the use of higher fees and penalty ranges for some violations but determined that a larger amount would be potentially detrimental to small businesses and micro-businesses. Finally, DADS considered the use of a maximum flat fee and penalty structure that did not take provider bed capacity into consideration, but determined that this structure would disproportionately impact smaller providers and a fee based on bed capacity could be implemented with minimal administrative costs.

PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is that DADS rules will be in compliance with state law.

Ms. Durden anticipates that there will be an economic cost to persons who are required to comply with the amendments because a late fee may be assessed for non-compliance with requirements for submitting a timely renewal application and administrative penalties, for which there is no opportunity to correct before imposition of the penalty, may be imposed for certain violations. The amendments will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist

in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kim Lammons at (512) 438-2264 in DADS' Regulatory Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-023, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st Street, Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to rulescomments@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be either (1) post-marked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 023" in the subject line.

SUBCHAPTER B. APPLICATION PROCEDURES

40 TAC §90.15, §90.19

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 252, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of intermediate care facilities for persons with mental retardation.

The amendments implement Texas Government Code, §531.0055, and Texas Human Resources Code, §252.008 and §161.021.

§90.15. Renewal Procedures and Qualifications.

(a) (No change.)

(b) Each license holder must, at least 45 days before ~~the~~ the expiration of the current license, file an application for renewal with DADS. DADS ~~the Texas Department of Human Services (DHS)~~ [the Texas Department of Human Services (DHS)] considers that an individual has filed a timely and sufficient application for the renewal of a license if the license holder:

(1) submits a complete application to DADS [DHS], and DADS [DHS] receives the complete application at least 45 days before the current license expires;

(2) submits an incomplete application to DADS [DHS] with a letter explaining the circumstances which prevented the inclusion of the missing information, and DADS [DHS] receives the incomplete application and letter at least 45 days before the current license expires; or

(3) submits a complete application to DADS [DHS], DADS [DHS] receives the application during the 45-day period

ending on the date the current license expires, and the license holder [individual] pays the late renewal fee established in §90.19(a)(4) of this subchapter (relating to License Fees) in addition to the basic renewal fee [a \$500 fine under the administrative penalties described in §90.236(h) of this title (relating to Administrative Penalties)].

(c) If the application is postmarked by the filing deadline, the application will be considered to be timely filed if received by DADS' Regulatory Services Licensing and Credentialing Section [in the Licensing Section of the state office of Long Term Care-Regulatory, Texas Department of Human Services,] within 15 days after [of] the postmark. If the application is postmarked by the filing deadline, the application will be considered to be timely filed if received in DADS' Regulatory Services Licensing and Credentialing Section [the licensing section of the state office of Long Term Care-Regulatory, DHS], within 30 days after [of] the postmark and the license holder proves to the satisfaction of the department that the delay was due to the fault of the United States Postal Service. It is the responsibility of the license holder to ensure that his application is timely received by DADS [DHS].

(d) The appropriate license fee must be paid upon submission of the renewal application [for renewal must contain the same information required for an original application as well as payment of the annual licensing fees].

(e) The renewal of a license may be denied for the same reasons an original application for a license may be denied. See §90.17 of this subchapter [title] (relating to Criteria for Denying a License or Renewal of a License).

§90.19. License Fees.

(a) Basic fees.

(1) - (2) (No change.)

(3) Change of administrator. A facility that hires a new administrator must notify DADS [the Texas Department of Human Services (DHS)] in writing not later than the 30th day after the date on which the change becomes effective and pay a \$20 fee to DADS [DHS].

(4) Late renewal fee. A license holder that submits an application for renewal during the 45-day period ending on the date the current license expires must pay a late renewal fee in an amount equal to one-half of the renewal fee described in paragraph (1) of this subsection.

(b) Emergency Assistance Fee.

(1) In addition to the licensing and renewal fee collected under Texas [the] Health and Safety Code, §252.034, DADS [DHS] may collect an annual fee to be used to make emergency assistance money available to a facility licensed under this chapter.

(2) The fee collected under this section shall be in the amount prescribed by Texas [the] Health and Safety Code, §252.097(b), and shall be deposited to the credit of the nursing and convalescent home trust fund established under Texas [the] Health and Safety Code, §252.096.

(3) DADS [DHS] may disburse money to a trustee for a facility licensed under this chapter to alleviate an immediate threat to the health or safety of the facility's residents. Payments under this section may include payments described by Texas [the] Health and Safety Code, §252.096(b).

(4) A court may order DADS [DHS] to disburse emergency assistance money to a trustee for a facility licensed under this chapter, if the court makes the findings provided by Texas [the] Health and Safety Code, §252.096(c).

(c) Method of Payment. Payment of fees for initial licenses, changes of ownership, increases in bed size, and license renewals must be by check or money order made payable to DADS [the Texas Department of Human Services]. All fees are non-refundable except as provided by Chapter 2005 of the Texas Government Code.

(d) Quality Assurance Fee. A quality assurance fee is imposed on each facility licensed under Texas [the] Health and Safety Code, Chapter 252, each intermediate care facility for persons with mental retardation owned by a community [mental health and] mental retardation center, and each facility owned by DADS [the Texas Department of Mental Health and Mental Retardation]. The fee is payable monthly and is in addition to other fees imposed under this chapter. The amount of the fee, method of payment, and penalties for noncompliance are stated in 1 TAC Chapter 352 (relating to Quality Assurance Fee).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

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SUBCHAPTER F. INSPECTIONS, SURVEYS, AND VISITS

40 TAC §90.192

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 252, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of intermediate care facilities for persons with mental retardation.

The amendment implements Texas Government Code, §531.0055, and Texas Human Resources Code, §252.008 and §161.021.

§90.192. Determinations and Actions Pursuant to Inspections, Surveys, or Investigations.

(a) DADS [The Texas Department of Human Services (DHS)] will determine if a facility meets licensure requirements through inspections, surveys, and investigations [the licensing rules, including both physical plant and facility operation requirements].

(b) During an investigation resulting from a complaint, DADS does not disclose the source of the complaint.

(c) At the conclusion of an inspection, survey, or investigation, a representative of DADS holds an exit conference with a representa-

tive of the facility and provides the facility representative a written list of violations.

(d) If DADS cites an additional violation during a review of field notes or preparation of the official final list of violations, DADS:

(1) communicates the additional violation to the facility in writing within ten working days after the exit conference; and

(2) gives the facility an additional face-to-face exit conference regarding the additional violations.

~~[(b) Violations of regulations will be listed on forms designed for the purpose of the inspection or will be listed in letter form when administrative penalties are being proposed.]~~

~~[(c) Violations found during complaint investigations will be furnished in writing and discussed with the facility management at the exit conference. The source of the complaint will not be revealed.]~~

~~[(d) At the conclusion of an inspection or survey, the violations will be discussed in an exit conference with the facility's management. A written list of the violations will be left with the facility at the time of the exit conference; any additional violation that may be determined during review of field notes or preparation of the official final list (when the official final list was not issued at the exit conference) will be communicated to the facility in writing within ten working days of the exit conference. Any discrepancies may be refuted through the Informal Review as outlined in §96.6 of this title (relating to the Informal Review Process for Intermediate Care Facilities for Persons with Mental Retardation and Related Conditions). Copies of any narratives or similar papers written to further describe the conditions will be furnished to the facility.]~~

(e) DADS provides the facility with a [A] clear and concise summary in nontechnical language of each licensure inspection or [; and/or] complaint investigation [will be provided by DHS at the time the report of contact or similar document is provided].

(f) The facility must submit a plan to correct cited violations to the regional director of the area in which the facility is located no later than 10 working days after the date the facility receives the final, official statement of violations. To be accepted by DADS, a plan to correct violations must state when the corrective action will be completed and must address:

(1) how the facility will accomplish corrective action for residents directly affected by the cited violation;

(2) how the facility will identify other residents who may be affected by the cited violation; and

(3) how the facility will avoid having the violation recur.

(g) If a facility fails to submit a plan to correct violations that meets the requirements of subsection (f) of this section, DADS may assess an administrative penalty against the facility in accordance with §90.236(a)(7) of this chapter (relating to Administrative Penalties).

~~[(f) If DHS or DHS's representative discovers any additional violations during the review of field notes or preparation of the official final list, DHS or DHS's representative will give the facility an additional exit conference regarding the additional violations.]~~

~~[(g) The facility must submit a plan to correct the violations to the regional director not later than the 10th calendar day after the date the facility receives the final statement of violations.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 31, 2008

For further information, please call: (512) 438-3734



SUBCHAPTER H. ENFORCEMENT

40 TAC §90.236, §90.240

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 252, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of intermediate care facilities for persons with mental retardation.

The amendment implements Texas Government Code, §531.0055, and Texas Human Resources Code, §252.008 and §161.021.

§90.236. *Administrative Penalties.*

(a) DADS [The Texas Department of Human Services (DHS)] may assess administrative penalties against a person who: [facility that violates the Health and Safety Code, Chapter 252, or any rule adopted under this chapter, as provided in this section:]

(1) violates Texas Health and Safety Code, Chapter 252, or any rule, standard, or order adopted or a license issued under such chapter;

(2) makes a false statement that the person knows or should know is false, of a material fact;

(A) on an application for issuance or renewal of a license or in documentation submitted to DADS in support of the application; or

(B) with respect to a matter under investigation by DADS;

(3) refuses to allow a representative of DADS to inspect:

(A) a book, record, or file required to be maintained by the person; or

(B) any portion of the premises of a facility;

(4) willfully interferes with the work of a representative of DADS or the enforcement of Texas Health and Safety Code, Chapter 252;

(5) willfully interferes with a representative of DADS preserving evidence of a violation of Texas Health and Safety Code, Chapter 252, or a rule, standard, or order adopted or license issued under such chapter;

(6) fails to pay a penalty assessed by DADS under Texas Health and Safety Code, Chapter 252, not later than the 10th day after the date the assessment of the penalty becomes final;

(7) fails to submit a plan of correction to DADS within 10 working days after receiving the final statement of licensing violations; or

(8) fails to notify DADS of a change in ownership before the effective date of that change of ownership.

(b) Definitions:

(1) For purposes of this section ~~[chapter]~~, a "violation" is defined as any noncompliance with Texas ~~[the]~~ Health and Safety Code, Chapter 252, or any rule under this chapter~~;~~ as provided in this section~~]~~.

(2) For purposes of this section ~~[chapter]~~, "immediate and serious threat" means a situation in which there is a high probability that serious harm or injury to residents could occur at any time or has already occurred and may occur again if individuals are not protected effectively from the harm or if the threat is not removed. "Immediate and serious threat" is described in Appendix Q of the State Operations Manual, "Guidelines for Determining Immediate and Serious Threat to Patient Health and Safety."

(3) For the purposes of this section ~~[chapter]~~, "serious harm" is any condition or situation that could result in severe, temporary or permanent injury, or death, or harm to the mental or physical condition of an individual.

(4) For the purposes of this section ~~[chapter]~~, "previous history" means any violation that resulted in the recommendation of an administrative penalty documented against a ~~[the]~~ facility in the ~~[past]~~ 24-month period immediately preceding the citation of the violation.

(c) Failure to meet the requirements of §90.42(c) of this chapter ~~[title]~~ (relating to Standards for Facilities Serving Persons with Mental Retardation or Related Conditions) is a cause to assess an administrative penalty.

(d) When a violation cited by DADS ~~[DHS]~~ is determined to be within the scope, severity, and description of the penalty schedules as stated in subsection (m) of this section, the violation may be cause for assessment of a penalty as described in this section and as listed in subsection (m) of this section. In determining which violations warrant penalties, DADS ~~[DHS]~~ will consider:

(1) - (2) (No change.)

(e) (No change.)

(f) An offense is defined as a sum of the licensure violations found during an inspection. The first offense violations carry the penalty shown in the "first offense" column under subsections (l) and ~~[subsection]~~ (m) of this section. The second offense violations carry the penalty shown in the "second offense" column. The third offense violations carry the penalty shown in the "third offense" column. An offense is counted against the facility even if the facility corrected the prior violation and an administrative penalty was not actually imposed.

(g) The progression of offenses described in subsection (f) of this section applies to facilities regardless of license renewals; however, when a facility has not had an offense for a period of two years, the facility's next offense will be in the "first offense" column under subsections (l) and ~~[subsection]~~ (m) of this section. A suspension of a license and subsequent reinstatement does not interrupt the progression.

(h) The administrative penalty begins on the date DADS ~~[DHS]~~ first established the deficiency existed. Administrative penalties will not be imposed on minor infractions. Penalties will be imposed on a per diem basis for those infractions in the administrative penalty schedule, as outlined under subsection (m) of the section. If DADS ~~[DHS]~~ determines that a violation has occurred that will result in an administrative penalty, the penalty for a facility with fewer than 60 beds will be not less than \$100 or more than \$1,000 for each violation. The penalty for a facility with 60 beds or more will not be less than \$100 or more than \$5,000 for each violation. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed \$5,000 for a facility with fewer than 60 beds or \$25,000 for a facility with 60 beds or more.

(i) A per diem penalty ceases on the date a violation has been corrected, and the facility:

(1) notifies DADS ~~[DHS]~~ in writing that the violation has been corrected; and

(2) - (3) (No change.)

(j) If DADS ~~[DHS]~~ determines that a violation has occurred and that an administrative penalty is proposed, DADS gives ~~[will be recommended; DHS will give]~~ written notice of the proposal to assess ~~[recommendation to proceed with]~~ an administrative penalty to the person designated by the facility to receive notice. The notice will include:

(1) (No change.)

(2) a statement of the amount of the proposed penalty based on the factors listed in subsections (d), (l) and (m) of this section; and

(3) (No change.)

(k) A facility for which an administrative penalty has been proposed may file a request for a hearing with the Health and Human Services Commission. The hearing must be requested in accordance with 1 TAC §357.484 (relating to Requests for a Hearing) except, as provided by Texas Health and Safety Code, §252.066, the facility must make a written request for a hearing within 20 calendar days after the date on which the facility receives written notice of the administrative penalty. A hearing requested under this section is governed by 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

(l) Assessments for violations warranting administrative penalties for licensed facilities, for which there is no right to correct prior to administrative penalty assessment are as follows:
Figure: 40 TAC §90.236(l)

~~[(k) A facility that has been recommended to be assessed an administrative penalty has a right to request an appeal as outlined in subsection (4) of this section.]~~

~~[(l) DHS is the state agency authorized to impose administrative penalties for certain violations in the ICF/MR program.]~~

~~[(1) For penalties that are the result of nonpayment of a license fee for the initial license, changes of ownership, increases in bed size, license renewals, or penalties outlined in subsection (m) of this section, the facility must give DHS written consent to the penalty or make a written request for a hearing within 20 calendar days after the date on which written notice to pay an administrative penalty is received by a facility. If the facility does not make a response within the 20 calendar day period, DHS will assess the penalty.]~~

~~[(2) For penalties assessed under 1 TAC §352.8, the facility must make a written request for a hearing to DHS within 20 calendar days after the date on which written notice to pay the penalty is received by the facility.]~~

~~{(3) Failure of the facility to file a notice to request a formal hearing within 20 calendar days constitutes a waiver of the right to a hearing. Hearings will be held in accordance with the formal hearing procedures in Chapter 79 of this title (relating to Legal Services).}~~

(m) Assessments [Scope, severity, and assessments] for violations warranting administrative penalties for licensed facilities for which there is a right to correct prior to administrative penalty assessment are as follows:

Figure: 40 TAC §90.236(m)

§90.240. *Right to Correct.*

(a) Except as provided in subsection (b) of this section, before imposing an administrative penalty, DADS [The Texas Department of Human Services (DHS)] will provide a reasonable period of time, not less than 45 days, to correct a violation if a plan of correction is implemented. A facility may request a shorter period of time to correct the violation by submitting a specific written request for an early inspection to clear the violation. If, during the requested early inspection, DADS [DHS] finds that the correction is not satisfactory, an administrative penalty may immediately be assessed from the first day of violation. [This subsection does not apply to a violation that DHS determines:]

(b) DADS is not required to give a facility the right to correct a violation prior to assessing an administrative penalty if DADS determines that the violation:

(1) has resulted in serious harm to or death of a resident;
[or]

(2) constitutes a serious threat to the health or safety of a resident; or[-]

(3) substantially limits the facility's capacity to provide care; or

(4) is described in §90.236(a)(2) - (8) of this subchapter (relating to Administrative Penalties).

(c) ~~{(b)}~~ DADS [DHS] may not assess an administrative penalty for a minor violation if the facility corrects the violation not later than the 46th day after the facility receives notice of the violation.

(d) ~~{(e)}~~ If the facility reports to DADS [DHS] that the violation has been corrected, DADS [DHS] will inspect the correction or take any other steps necessary to confirm that the violation has been corrected and notify the facility that:

(1) the correction is satisfactory and a penalty is not assessed; or

(2) the correction is not satisfactory and a penalty is recommended.

(e) ~~{(d)}~~ If the facility wishes to appeal the administrative penalty, the facility must file a notice to request a hearing on the violation or penalty no later than the 20th calendar day after the date on which the notice to pay an administrative penalty is received.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734

CHAPTER 92. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new Subchapter A, consisting of §§92.1 - 92.6, concerning purpose and application, definitions, types of assisted living facilities, license fees, health care professional, and general characteristics of residents; new Subchapter B, consisting of §§92.11 - 92.20, concerning criteria for licensing, general application requirements, time periods for processing all types of license applications, initial application procedures and requirements, renewal procedures and qualifications, change of ownership, relocation, increase in capacity, decrease in capacity, and provisional license; new §92.54, concerning advertisements, solicitations, and promotional material; and new Subchapter H, Division 9, consisting of §92.551, concerning administrative penalties; and proposes the repeal of Subchapter A, consisting of §§92.2 - 92.4, concerning basis and scope, chapter definitions, and types of assisted living facilities; Subchapter B, consisting of §§92.10 - 92.23, concerning licenses and licensing application procedures for assisted living facilities; Subchapter H, Division 9, consisting of §§92.551 - 92.595, concerning administrative penalties; and Subchapter H, Division 10, consisting of §§92.601 - 92.616, concerning enforcement, in Chapter 92, Licensing Standards for Assisted Living Facilities.

BACKGROUND AND PURPOSE

The purpose of the new sections and repeal is, in part, to implement some of the provisions of Senate Bill (SB) 1318, 80th Legislature, Regular Session, 2007, which amended the Texas Health and Safety Code, Chapter 247. The rules are being rewritten to update agency names, rules citations, and definitions; clarify criteria for licensing; reflect current application procedures; and reorganize the rules to place them in a more logical order.

SECTION-BY-SECTION SUMMARY

Proposed new §92.1 states the purpose of the chapter.

Proposed new §92.2 defines words and terms commonly used throughout the chapter.

Proposed new §92.3 provides the criteria used to classify licensure types for assisted living facilities (ALFs). The four types of licenses are Type A - C and Type E. An assisted living facility's license type is based on resident capability, facility services, or both.

Proposed new §92.4 establishes license fees based on the type of ALF and whether a one-year or two-year license is sought. The new section also sets the rates for a late renewal fee, trust fund fee, and plan review fee. New §92.4 also provides general information regarding how to pay the required fees.

Proposed new §92.5 allows a resident to contract with persons or agencies outside the facility for health care services, including services similar to those available in a nursing facility.

Proposed new §92.6 provides some of the characteristics of a resident in an ALF.

Proposed new §92.11 sets the criteria an ALF must meet in order to be licensed.

Proposed new §92.12 provides the basic requirements for application submission for licensure of an ALF.

Proposed new §92.13 provides the time periods for processing ALF license applications. The new section also provides that an applicant can request reimbursement of license fees paid with the submission of an application, when an application is not processed in the time period specified by DADS.

Proposed new §92.14 provides instructions regarding application procedures and requirements for an initial ALF license.

Proposed new §92.15 provides the procedures and qualifications an applicant must meet to renew an ALF license.

Proposed new §92.16 states that an ALF must notify DADS of a change of ownership before the anticipated effective date of the change. The new section allows DADS to assess an administrative penalty against a license holder who does not comply with the requirements of the section.

Proposed new §92.17 provides the requirements for relocation of an ALF's residents when a facility closes and residents have to be moved to a different location.

Proposed new §92.18 requires an ALF license holder to apply for, pay for, and obtain approval from DADS for an increase in a facility's licensed capacity.

Proposed new §92.19 states that an ALF license holder must notify DADS, in writing, of the desire to decrease the facility's licensed capacity.

Proposed new §92.20 details the circumstances under which DADS may issue a provisional license.

Proposed new §92.54 states that an ALF's state-issued facility identification number must be used in all marketing materials.

Proposed new §92.551 provides the violations for which DADS may assess an administrative penalty against an ALF license holder. The new section also provides the criteria DADS considers when deciding the amount of the administrative penalty. A new schedule of administrative penalties is included in the new section. The schedule lists the violations for which DADS may assess an administrative penalty with the corresponding fees. The new section allows for an opportunity to correct certain violations and avoid the assessment of an administrative penalty.

The repeal of §§92.2 - 92.4 deletes the existing rule sections, which are replaced by new Subchapter A. The repeal of §§92.10 - 92.23 deletes the existing rule sections, which are replaced by new Subchapter B. The repeal of §§92.551 - 92.595 and §§92.601 - 92.616 deletes Subchapter H, Divisions 9 and 10, which are replaced by new Subchapter H, Division 9.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed new sections and repeal are in effect, there are no significant foreseeable implications relating to costs or revenues of state and local government.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new sections and repeal may have an adverse economic effect on small businesses and micro-businesses because the businesses that do not comply with the rule are subject to a late fee in the amount equal to one-half of the basic application fee. Also, if a facility fails to notify DADS of a change of ownership before the effective date of the change, the facility may be charged an administrative penalty.

DADS estimates that the number of small businesses and micro-businesses subject to the proposed new sections and repeal is less than 1,242. This estimate is based on DADS records which indicate that of the 1,463 licensed ALFs, 1,242 are formed for the purpose of making a profit, one of the requirements for being a small or micro-business. The projected economic impact for a small business and micro-business is a possible late fee ranging from \$25 to \$750 and possible administrative penalty ranging from \$100 to \$1000.

Several alternatives were considered in determining how to accomplish the objectives of the proposed rules while minimizing the adverse economic effect on small businesses and micro-businesses. Statute gives DADS the option of assessing a late fee if an assisted living facility does not comply with the rules related to the submission of a renewal application. Therefore, DADS considered not imposing a late fee against a facility that does not comply with the proposed rule. DADS did not consider this option consistent with its responsibility as a regulatory agency and, specifically, determined that this option would not adequately address its needs to have a timely renewal application submitted. DADS may also assess an administrative penalty against a facility that fails to notify DADS of a change of ownership. DADS considered the previous option of not imposing a penalty against a facility for failure to notify DADS of a change of ownership before the effective date of the change. DADS did not consider this option consistent with its responsibility as a regulatory agency and, specifically, determined that this option would not adequately address its needs of receiving a timely notification before a change of ownership occurs. DADS considered the use of a maximum flat fee and penalty structure that did not take provider bed capacity into consideration but determined that this structure would disproportionately impact smaller providers.

PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the new sections and repeal are in effect, the public benefit expected as a result of enforcing the new sections and repeal is that DADS rules will comply with statutory law. The public will also benefit from the rules being easier to read and follow.

Ms. Durden anticipates that there may be an economic cost to persons who are required to comply with the new sections and repeal, because a late fee or administrative penalty may be assessed for noncompliance. The new sections and repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Hannah Ndika at (512) 438-2133 in DADS' Regulatory Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-015, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to rulescomments@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a

Sunday; therefore, comments must be either (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 015" in the subject line.

SUBCHAPTER A. INTRODUCTION

40 TAC §§92.1 - 92.6

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities.

The new sections implement Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §§247.001 - 247.069.

§92.1. Purpose and Application.

(a) The purpose of this chapter is to establish:

(1) the criteria and application procedure for licensing an assisted living facility;

(2) the licensing standards with which an assisted living facility must comply and that serve as a basis for licensure inspections, including:

(A) operation and resident care standards; and

(B) facility construction standards;

(3) the inspections and investigations DADS staff may conduct as a regulatory authority; and

(4) enforcement actions DADS may take against an assisted living facility.

(b) This chapter applies to an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247. Assisted living services are driven by a philosophy that emphasizes personal dignity and autonomy to age in place in a residential setting while receiving increasing or decreasing levels of services as the person's needs change.

§92.2. Definitions.

The following words and terms, when used in this chapter, have the following meaning, unless the context clearly indicates otherwise.

(1) Accreditation commission--Has the meaning given in Texas Health and Safety Code, §247.032.

(2) Advance directive--Has the meaning given in Texas Health and Safety Code, §166.002.

(3) Affiliate--With respect to:

(A) a partnership, each partner thereof;

(B) a corporation, each officer, director, principal stockholder, subsidiary, and each person with a disclosable interest, as the term is defined in this section; and

(C) a natural person:

(i) said person's spouse;

(ii) each partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

(iii) each corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(4) Alzheimer's facility--A type B assisted living facility that is certified to provide specialized services to residents with Alzheimer's or a related condition.

(5) Applicant--A person applying for an assisted living license under Texas Health and Safety Code, Chapter 247.

(6) Attendant--A facility employee who provides direct care to residents. This employee may serve other functions, including cook, janitor, porter, maid, laundry worker, security personnel, bookkeeper, activity director and manager.

(7) Authorized electronic monitoring (AEM)--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(8) Bedfast--A resident who is permanently confined to a bed.

(9) Behavioral emergency--Has the meaning given in §92.41(p)(2) of this chapter (relating to Standards for Type A, Type B, and Type E Assisted Living Facilities).

(10) Change of ownership--A change of ownership is:

(A) a change of sole proprietorship that is licensed to operate a facility;

(B) a change of 50 percent or more in the ownership of the business organization that is licensed to operate the facility;

(C) a change in the federal taxpayer identification number; or

(D) relinquishment by the license holder of the operation of the facility.

(11) Co-mingles--The laundering of apparel or linens of two or more individuals together.

(12) Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an assisted living facility or other person. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of an assisted living facility;

(B) any person who is a controlling person of a management company or other business entity that operates an assisted living facility or that contracts with another person for the operation of an assisted living facility; and

(C) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an assisted living facility, is in a position of actual control

or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility, except an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of an assisted living facility.

(13) Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and DADS have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(14) DADS--The Department of Aging and Disability Services.

(15) DHS--Formerly, this term referred to the Texas Department of Human Services; it now refers to DADS.

(16) Dietitian--A person who currently holds a license or provisional license issued by the Texas State Board of Examiners of Dietitians.

(17) Disclosure statement--A DADS form for prospective residents or their legally authorized representatives that a facility must complete. The form contains information regarding the preadmission, admission, and discharge process; resident assessment and service plans; staffing patterns; the physical environment of the facility; resident activities; and facility services.

(18) Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(19) Facility--An entity required to be licensed under the Assisted Living Facility Licensing Act, Texas Health and Safety Code, Chapter 247.

(20) Fire suppression authority--The paid or volunteer fire-fighting organization or tactical unit that is responsible for fire suppression operations and related duties once a fire incident occurs within its jurisdiction.

(21) Governmental unit--The state or any county, municipality, or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

(22) Health care professional--An individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term includes a physician, registered nurse, licensed vocational nurse, licensed dietitian, physical therapist, and occupational therapist.

(23) Immediate threat--There is considered to be an immediate threat to the health or safety of a resident, or a situation is considered to put the health or safety of a resident in immediate jeopardy, if there is a situation in which an assisted living facility's noncompliance with one or more requirements of licensure has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

(24) Immediately available--The capacity of facility staff to immediately respond to an emergency after being notified through a communication or alarm system. The staff are to be no more than 600 feet from the farthest resident.

(25) Large facility--A facility licensed for 17 or more residents.

(26) Legally authorized representative--A person authorized by law to act on behalf of a person with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(27) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, or food services.

(28) Manager--The individual in charge of the day-to-day operation of the facility.

(29) Medication--

(A) Medication is any substance:

(i) recognized as a drug in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, Texas Drug Code Index or official National Formulary, or any supplement to any of these official documents;

(ii) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;

(iii) other than food intended to affect the structure or any function of the body; and

(iv) intended for use as a component of any substance specified in this definition.

(B) Medication includes both prescription and over-the-counter medication, unless otherwise specified.

(C) Medication does not include devices or their components, parts, or accessories.

(30) Medication administration--The direct application of a medication or drug to the body of a resident by an individual legally allowed to administer medication in the state of Texas.

(31) Medication assistance or supervision--The assistance or supervision of the medication regimen by facility staff. Refer to §92.41(j) of this chapter.

(32) Medication (self-administration)--The capability of a resident to administer the resident's own medication or treatments without assistance from the facility staff.

(33) NFPA 101--The 1988 publication titled "NFPA 101 Life Safety Code" published by the National Fire Protection Association, Inc., 1 Batterymarch Park, Quincy, Massachusetts 02169.

(34) Ombudsman--An advocate who is a certified representative, staff member, or volunteer of the Office of the State Long-Term Care Ombudsman.

(35) Outside resource--A home and community support services agency licensed under Texas Health and Safety Code, Chapter 142, or a health care professional not employed by the facility.

(36) Person--Any individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

(37) Person with a disclosable interest--Any person who owns 5.0 percent interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Health and Safety Code, Chapter 247. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company,

investment banking firm, or insurance company unless such entity participates in the management of the facility.

(38) Personal care services--Assistance with meals, dressing, movement, bathing, or other personal needs or maintenance; the administration of medication or the assistance with or supervision of medication; or general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in the facility or who needs assistance to manage his or her personal life, regardless of whether a guardian has been appointed for the person.

(39) Physician--A practitioner licensed by the Texas Medical Board.

(40) Practitioner--An individual who is currently licensed in a state in which the individual practices as a physician, dentist, podiatrist, or a physician assistant; or a registered nurse approved by the Texas Board of Nursing to practice as an advanced practice nurse.

(41) Qualified medical personnel--An individual who is licensed, certified, or otherwise authorized to administer health care. The term includes a physician, registered nurse, and licensed vocational nurse.

(42) Resident--An individual accepted for care in a facility.

(43) Respite--The provision by a facility of room, board, and care at the level ordinarily provided for permanent residents of the facility to a person for not more than 60 days for each stay in the facility.

(44) Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(45) Restraints--Chemical restraints are psychoactive drugs administered for the purposes of discipline or convenience and are not required to treat the resident's medical symptoms. Physical restraints are any manual method, or physical or mechanical device, material, or equipment attached or adjacent to the resident that restricts freedom of movement. Physical restraints include restraint holds.

(46) Safety--Protection from injury or loss of life due to such conditions as fire, electrical hazard, unsafe building or site conditions, and the hazardous presence of toxic fumes and materials.

(47) Seclusion--The involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

(48) Service plan--A written description of the medical care or the supervision and nonmedical care needed by a resident.

(49) Short-term acute episode--An illness of less than 30 days duration.

(50) Small facility--A facility licensed for 16 or fewer residents.

(51) Staff--Employees of an assisted living facility.

(52) Standards--The minimum conditions, requirements, and criteria established in this chapter with which a facility must comply to be licensed under this chapter.

(53) Terminal condition--A medical diagnosis, certified by a physician, of an illness that will result in death in six months or less.

(54) Universal precautions--An approach to infection control in which blood, any body fluids visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids are treated as if known to be infectious for HIV, hepatitis B, and other blood-borne pathogens.

(55) Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

§92.3. Types of Assisted Living Facilities.

(a) Basis for licensure type. An assisted living facility must be licensed as a Type A, Type B, Type C, or Type E facility. A facility's licensure type is based on the capability of the residents to evacuate the facility or the types of services the facility provides, or both, as described in this section.

(b) Type A. In a Type A facility, a resident:

(1) must be physically and mentally capable of evacuating the facility without physical assistance from staff, which may include an individual who is mobile, although non-ambulatory, such as an individual who uses a wheelchair or an electric cart, and has the capacity to transfer and evacuate himself or herself in an emergency;

(2) does not require routine attendance during nighttime sleeping hours; and

(3) must be capable of following directions under emergency conditions.

(c) Type B. In a Type B facility, a resident may:

(1) require staff assistance to evacuate;

(2) require attendance during nighttime sleeping hours;

(3) be incapable of following directions under emergency conditions; and

(4) require assistance in transferring to and from a wheelchair, but must not be permanently bedfast.

(d) Type C. A Type C facility is a four-bed facility that:

(1) has an active contract with DADS to provide adult foster care services as described in Chapter 48, Subchapter K of this title (relating to Minimum Standards for Adult Foster Care); and

(2) must be contracted with DADS to provide adult foster care services before it can be licensed.

(e) Type E.

(1) Limitation on types of residents. In a Type E facility, a resident:

(A) must be physically and mentally capable of evacuating the facility without physical assistance from staff, which may include an individual who is mobile, although non-ambulatory, such as an individual who uses a wheelchair or an electric cart and has the capacity to transfer and evacuate himself or herself in an emergency;

(B) must not require routine attendance during nighttime sleeping hours; and

(C) must be capable of following directions under emergency conditions.

(2) Limitation on types of services. Notwithstanding any other provision in this chapter, a Type E facility:

(A) provides only:

(i) medication supervision, in accordance with Texas Health and Safety Code, §247.002(5)(B); and

(ii) general supervision of residents' welfare, in accordance with Texas Health and Safety Code §247.002(5)(C); and

(B) must not provide substantial assistance with the activities of daily living, as described by Texas Health and Safety Code §247.002(5)(A) (assistance with meals, dressing, movement, bathing, or other personal needs or maintenance).

§92.4. License Fees.

(a) Basic fees.

(1) Type A, Type B, and Type E. The license fee is \$200, plus \$10 for each bed for which a license is sought, with a maximum of \$1,500. The license fee for a one-year license issued in accordance with §92.15(b)(1) of this subchapter (relating to Renewal Procedures and Qualifications) is \$100, plus \$5 for each bed for which a license is sought, with a maximum of \$750. The fee must be paid with each initial application and with each renewal application.

(2) Type C. The license fee is \$100. The license fee for a one-year license issued in accordance with §92.15(b)(1) of this subchapter is \$50. The fee must be paid with each initial application and with each renewal application.

(3) Provisional license. The license fee is \$75, plus \$5 for each bed for which a license is sought, with a maximum of \$750.

(4) Increase in capacity. An approved increase in capacity is subject to an additional fee of \$10 for each bed.

(b) Late renewal fee. An applicant that submits an application for license renewal later than the 45th day before the expiration date of the license must pay a late fee of an amount equal to one-half of the basic fee required in accordance with subsection (a)(1) and (2) of this section.

(c) Alzheimer's certification. In addition to the basic license fee described in subsection (a) of this section, a facility that applies for certification as an Alzheimer's facility under Subchapter C of this chapter (relating to Standards for Licensure) must pay an additional license fee. The additional fee is \$200, except the additional fee for a facility renewing its Alzheimer's certification in accordance with §92.51(f)(1) of this chapter (relating to Licensure of Facilities for Persons with Alzheimer's Disease) is \$100 for the first renewal beginning September 1, 2008.

(d) Trust fund fee.

(1) If the amount in the assisted living facility trust fund, established under Texas Health and Safety Code, Chapter 242, Subchapter D, and Chapter 247, §247.003(b), is less than \$500,000, DADS collects an annual fee from each facility. The fee is based on a monetary amount specified for each licensed unit of capacity or bed space, and is in an amount sufficient to provide not more than \$500,000 in the trust fund. When the trust fund fee is collected, DADS sends written notice to each facility stating the amount of the fee and the date the fee is due. A facility must pay the amount of the fee within 90 days after the date the fee is due.

(2) DADS may charge and collect a trust fund fee more than once a year if necessary to ensure that the amount in the assisted living facility trust fund is sufficient to make the disbursements required under Texas Health and Safety Code, §242.0965. When this subsequent trust fund fee is collected, DADS sends written notice to each facility stating the amount of the fee and the date the fee is due. A facility must pay the amount of the fee within 90 days after the date the fee is due.

(3) Failure to pay the trust fund fee within 90 days after the date the fee is due as stated on the written notice described in paragraphs (1) and (2) of this subsection may result in an assessment of an administrative penalty under the administrative penalties described in Subchapter H, Division 9 of this chapter (relating to Administrative Penalties).

(e) Plan review fee. An applicant may submit building plans for a new building, an addition, the conversion of a building not licensed, or for the remodeling of an existing licensed facility for review by DADS architectural staff. If the applicant chooses to submit building plans for review, the applicant must pay a fee for the plan review according to the following schedule:

Figure: 40 TAC §92.4(e)

(f) Payment of fees. Payment of fees must be by check, cashier's check, or money order made payable to the Department of Aging and Disability Services. All fees are nonrefundable, except as provided in Texas Government Code, Chapter 2005, and in §92.13(d) of this chapter (relating to Time Periods for Processing All Types of License Applications).

§92.5. Health Care Professional.

(a) A health care professional, may provide services to a resident within the professional's scope of practice; however, the facility must not provide ongoing services to a resident that are comparable to the services available in a nursing facility licensed under Texas Health and Safety Code, Chapter 242.

(b) A resident may contract with outside resources to have health care services delivered to the resident at the facility.

§92.6. General Characteristics of a Resident.

This section describes some general characteristics of a resident in an assisted living facility. A resident may:

(1) exhibit symptoms of mental or emotional disturbance, but is not considered at risk of imminent harm to self or others;

(2) need assistance with movement;

(3) require assistance with bathing, dressing, and grooming;

(4) require assistance with routine skin care, such as application of lotions or treatment of minor cuts and burns;

(5) need reminders to encourage toilet routine and prevent incontinence;

(6) require temporary services by professional personnel;

(7) need assistance with medication, supervision of self-medication, or administration of medication;

(8) require encouragement to eat or monitoring due to social or psychological reasons of temporary illness;

(9) be hearing impaired or speech impaired;

(10) be incontinent without pressure sores;

(11) require an established therapeutic diet;

(12) require self-help devices; and

(13) need assistance with meals, which may include feeding.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 21, 2008.

◆ ◆ ◆
**SUBCHAPTER B. APPLICATION
PROCEDURES**

40 TAC §§92.11 - 92.20, 92.54

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities.

The new sections implement Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §§247.001 - 247.069.

§92.11. Criteria for Licensing.

(a) A person must be licensed to establish or operate an assisted living facility in Texas.

(1) An assisted living facility is an establishment that:

(A) furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment; and

(B) provides personal care services.

(2) DADS considers one or more facilities to be part of the same establishment and, therefore, subject to licensure as an assisted living facility, based on the following factors:

(A) common ownership;

(B) physical proximity;

(C) shared services, personnel, or equipment in any part of the facilities' operations; and

(D) any public appearance of joint operations or of a relationship between the facilities.

(3) The presence or absence of any one factor in paragraph (2) of this subsection is not conclusive.

(b) To obtain a license, a person must follow the application requirements in this subchapter and meet the criteria for a license.

(c) An applicant must affirmatively show that the applicant, license holder, controlling person, and any person required to submit background and qualification information meet the criteria and eligibility for licensing, in accordance with this section, and:

(1) affirmatively show that:

(A) the building in which the facility is housed:

(i) meets local fire ordinances;

(ii) is approved by the local fire authority; and

(iii) meets DADS licensing standards in accordance with Subchapter D of this chapter (relating to Facility Construction); and

(B) operation of the facility meets DADS licensing standards based on an on-site health inspection by DADS staff, which must include observation of the care of a resident; or

(2) affirmatively show that the facility meets the standards for accreditation based on an on-site accreditation survey by the accreditation commission.

(d) An applicant that chooses the option allowed in subsection (c)(2) of this section must contact DADS to determine which accreditation commissions are available to meet the requirements of subsection (c)(2) of this section.

(e) DADS denies an application for an initial license or for the renewal of a license if:

(1) the applicant, license holder, controlling person, or any person required to submit background and qualification information has been debarred or excluded from the Medicare or Medicaid programs by the federal government or a state;

(2) a court has issued an injunction prohibiting the applicant, license holder, controlling person, or any person required to submit background and qualification information from operating a facility; or

(3) during the five years preceding the date of the application, a license to operate a health care facility, long-term care facility, assisted living facility, or similar facility in any state held by the applicant, license holder, controlling person, or any person required to submit background and qualification information has been revoked.

(f) A license holder or controlling person who operates a nursing facility or an assisted living facility for which a trustee was appointed and for which emergency assistance funds, other than funds to pay the expenses of the trustee, were used is subject to exclusion from eligibility for:

(1) the issuance of an initial license for a facility for which the person has not previously held a license; and

(2) the renewal of the license of the facility for which the trustee was appointed.

(g) DADS may deny an application for an initial license or refuse to renew a license if an applicant, license holder, controlling person, or any person required to submit background and qualification information:

(1) violates Texas Health and Safety Code, Chapter 247; a section, standard or order adopted under Chapter 247; or a license issued under Chapter 247 in either a repeated or substantial manner;

(2) commits an act described in §92.551(a)(2)-(7) of this chapter (relating to Administrative Penalties);

(3) aids, abets, or permits a substantial violation described in paragraphs (2) - (3) of this subsection about which the person had or should have had knowledge;

(4) fails to provide the required information, facts, or references;

(5) provides the following false or fraudulent information:

(A) knowingly submits false or intentionally misleading statements to DADS;

(B) uses subterfuge or other evasive means of filing an application for licensure;

(C) engages in subterfuge or other evasive means of filing on behalf of another who is unqualified for licensure;

(D) knowingly conceals a material fact related to licensure; or

(E) is responsible for fraud;

(6) fails to pay the following fees, taxes, and assessments when due:

(A) license fees as described in §92.4 of this chapter (relating to License Fees); or

(B) franchise taxes, if applicable;

(7) during the five years preceding the date of the application, has a history in any state or other jurisdiction of any of the following:

(A) operation of a facility that has been decertified or has had its contract canceled under the Medicare or Medicaid program;

(B) federal or state long-term care facility, assisted living facility, or similar facility sanctions or penalties, including monetary penalties, involuntary downgrading of the status of a facility license, proposals to decertify, directed plans of correction, or the denial of payment for new Medicaid admissions;

(C) unsatisfied final judgments, excluding judgments wholly unrelated to the provision of care rendered in long-term care facilities;

(D) eviction involving any property or space used as a facility; or

(E) suspension of a license to operate a health care facility, long-term care facility, assisted living facility, or a similar facility; or

(8) violates Texas Health and Safety Code, §247.021 by operating a facility without a license.

(h) For the grounds for denial of an application for an initial license or an application for renewal of a license set out in subsection (g)(8) of this section, DADS considers exculpatory information provided by an applicant, a license holder, a person with a disclosable interest, or a manager and may grant a license if DADS finds the applicant, license holder, person with a disclosable interest, affiliate, or manager able to comply with the rules in this chapter.

(i) For the grounds for denial of an application for an initial license or an application for renewal of a license set out in subsections (e) and (g)(8) of this section, DADS considers only final actions. An action is final when routine administrative and judicial remedies are exhausted. An applicant must disclose all actions, whether pending or final.

(j) If an applicant owns multiple facilities, DADS examines the overall record of compliance in all of the applicant's facilities. An overall record poor enough to deny issuance of a new license does not preclude the renewal of a license of a facility with a satisfactory record.

§92.12. General Application Requirements.

(a) An application must be made on the form prescribed by and available from DADS.

(b) An applicant must complete the application in accordance with the instructions provided with the application. An application must be signed, dated, and notarized, and must contain the applicable license fee as described in §92.4 of this chapter (relating to License Fees).

(c) An application must include the written approval of the local fire authority that the facility and its operations meet local fire ordinances.

(d) If an applicant decides not to continue the application process for a license after submitting an application and license fee, the applicant must submit to DADS a written request to withdraw the application. DADS does not refund the license fee for an application that is withdrawn, except as provided in §92.13(d) of this subchapter (relating to Time Periods for Processing All Types of License Applications).

§92.13. Time Periods for Processing All Types of License Applications.

(a) DADS reviews an application for a license within 30 days after the date DADS' Licensing and Credentialing Section receives the application and notifies the applicant if additional information is needed to complete the application.

(b) DADS denies an application that remains incomplete 120 days after the date that DADS' Licensing and Credentialing Section receives the application.

(c) DADS issues a license within 30 days after DADS determines that the applicant and the facility have met all licensure requirements referenced in §92.14 of this subchapter (relating to Initial License Application Procedures and Requirements) or §92.15 of this subchapter (relating to Renewal Procedures and Qualification), as applicable.

(d) If DADS does not process an application in the time period stated, the applicant has a right to make a request to the program director for reimbursement of the license fees paid with the application.

(1) If the program director does not agree that the established time period has been violated or finds that good cause existed for exceeding the established time period, the program director denies the request.

(2) Good cause for exceeding the established time period exists if:

(A) the number of applications to be processed exceeds by 15 percent or more the number processed in the same calendar quarter of the preceding year;

(B) DADS must rely on another public or private entity to process all or a part of the application received by DADS, and the delay is caused by that entity; or

(C) other conditions existed giving good cause for exceeding the established time period.

(3) If the request for reimbursement is denied, the applicant may appeal to the DADS commissioner for resolution of the dispute. The applicant must send a written statement to the DADS commissioner describing the request for reimbursement and the reason for the request. The DADS commissioner will make a timely decision concerning the appeal and notify the applicant in writing of the decision.

§92.14. Initial License Application Procedures and Requirements.

(a) An applicant must complete the DADS pre-licensure training course before submitting an application for an initial license. An applicant that is currently licensed under Texas Health and Safety Code, Chapter 247 is exempt from this requirement.

(b) An applicant for an initial license must file an application in accordance with §92.12 of this subchapter (relating to General Application Requirements) and include the fees required in §92.4 of this chapter (relating to License Fees).

(c) DADS reviews an application for an initial license within 30 days after the date DADS' Licensing and Credentialing Section receives the application and notifies the applicant if additional information is needed to complete the application.

(d) The applicant must send written notice to DADS indicating that the facility is ready for a Life Safety Code (LSC) inspection. The written notice must be sent with the application or within 120 days after DADS' Licensing and Credentialing Section receives the application. After DADS has received the written notice and the applicant has satisfied the application filing requirements in §92.11 of this subchapter (relating to Criteria for Licensing) and §92.12 of this subchapter, DADS staff conduct an on-site LSC inspection of the facility to determine if the facility meets the licensure requirements in Subchapter D of this chapter (relating to Facility Construction).

(e) If the facility fails to meet the licensure requirements within 120 days after the initial LSC inspection, DADS denies the application for a license.

(f) After a facility has met the licensure requirements in Subchapter D of this chapter and has admitted at least one but no more than three residents, the applicant must send a written notice to DADS indicating the facility is ready for a health inspection.

(1) DADS staff conduct an on-site health inspection to determine if the facility meets the licensure requirements for standards of operation and resident care in Subchapter C of this chapter (relating to Standards for Licensure).

(2) If the facility fails to meet the licensure requirements for standards of operation and resident care within 120 days after the initial health inspection, DADS denies the application for a license.

(g) DADS issues a license within 30 days after DADS determines that the applicant and the facility have met the licensure requirements of this section. The issuance of a license constitutes DADS' official written notice to the facility of the approval of the application.

(h) DADS may deny an application for an initial license if the applicant, controlling person, or any person required to submit background and qualification information fails to meet the criteria for a license established in §92.11 of this subchapter.

(i) If DADS denies an application for an initial license, DADS sends the applicant a written notice of the denial and informs the applicant of the applicant's right to request an administrative hearing to appeal the denial. The administrative hearing is held in accordance with Texas Health and Human Services Commission rules at 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

§92.15. Renewal Procedures and Qualifications.

(a) A license issued under this chapter:

(1) expires two years after the date issued, except as provided by subsection (b) of this section;

(2) must be renewed before the license expiration date; and

(3) is not automatically renewed.

(b) A facility must submit an application for license renewal and a renewal license will be valid as follows:

(1) For two years beginning September 1, 2008, a facility with a facility identification number that ends in an odd number (1,

3, 5, 7, or 9) must submit an application to renew its license before the expiration date on the license in accordance with this section. The facility's first renewal license issued beginning September 1, 2008, is valid for one year, and subsequent renewal licenses are valid for two years.

(2) A facility with a facility identification number that ends in an even number (0, 2, 4, 6, or 8) must submit an application to renew its license before the expiration date on the license in accordance with this section. The facility's renewal licenses are valid for two years.

(c) An application for renewal must comply with the requirements of §92.12 of this subchapter (relating to General Application Requirements) and §92.13 of this subchapter (relating to Time Periods for Processing All Types of License Applications). The submission of a license fee alone does not constitute an application for renewal.

(d) To renew a license, a license holder must file an application for renewal with DADS before the expiration date. DADS considers an application for renewal has met the filing deadline if the license holder submits to DADS:

(1) a complete application for renewal no later than 45 days before the expiration of the current license;

(2) an incomplete application for renewal, with a letter explaining the circumstances that prevented the inclusion of the missing information, and DADS receives the incomplete application and the letter no later than 45 days before the expiration of the current license; or

(3) an application for renewal during the 45-day period ending on the date the current license expires and pays a late renewal fee in accordance with §92.4(b) of this chapter (relating to License Fees).

(e) If the application is postmarked on or before the filing deadline, the application is considered to be timely filed if it is received in DADS' Licensing and Credentialing Section, Regulatory Services Division, within 15 days after the date of the postmark, or within 30 days after the date of the postmark and the license holder proves to the satisfaction of DADS that the delay was due to the shipper. It is the license holder's responsibility to ensure that the application is timely received by DADS.

(f) For purposes of Texas Government Code, §2001.054, DADS considers that an individual has filed a timely and sufficient application for the renewal of a license if the license holder's application has met the filing deadlines in subsections (d) and (e) of this section. Failure to file a timely and sufficient application will result in the expiration of the license.

(g) An application for renewal filed after the expiration date of the license is considered to be an application for an initial license and must comply with the requirements for an initial license in §92.14 of this subchapter (relating to Initial License Application Procedures and Requirements).

(h) DADS reviews an application for a renewal license within 30 days after the date DADS' Licensing and Credentialing Section receives the application and notifies the applicant if additional information is needed to complete the application.

(i) A license holder applying for a license renewal must affirmatively show that the facility meets DADS licensing standards based on an on-site inspection by DADS, which must include an observation of the care of a resident.

(j) If an applicant is relying on §92.11(c)(2) of this subchapter (relating to Criteria for Licensing) to comply with the requirements

for licensure, the application for the renewal of a license must include a copy of the license holder's required accreditation report from the accreditation commission.

(k) DADS may pend action on an application for the renewal of a license for up to six months if the facility has not met licensure requirements during an on-site inspection.

(l) The issuance of a license constitutes DADS' official written notice to the facility of the approval of the application.

(m) DADS may deny an application for the renewal of a license if the applicant, controlling person, or any person required to submit background and qualification information fails to meet the criteria for a license established in §92.11 of this subchapter.

(n) Before denying an application for renewal of a license, DADS gives the license holder:

(1) notice by personal service or by registered or certified mail of the facts or conduct alleged to warrant the proposed action; and

(2) an opportunity to show compliance with all requirements of law for the retention of the license.

(o) To request an opportunity to show compliance, the license holder must send its written request to the director of the Enforcement Section, Regulatory Services Division. The request must:

(1) be postmarked within 10 days after the date of DADS' notice and be received in the office of the director of the Enforcement Section, Regulatory Services Division, within 10 days after the date of the postmark; and

(2) contain specific documentation refuting DADS' allegations.

(p) The opportunity to show compliance is limited to a review of documentation submitted by the license holder and information DADS used as the basis for its proposed action and is not conducted as an adversary hearing. DADS gives the license holder a written affirmation or reversal of the proposed action.

(q) If DADS denies an application for the renewal of a license, the applicant may request:

(1) an informal reconsideration by the Health and Human Services Commission; and

(2) an administrative hearing to appeal the denial.

§92.16. Change of Ownership.

(a) A license is not transferable as part of a change of ownership as defined in §92.2 of this chapter (relating to Definitions).

(b) At least 30 days before the anticipated date of the change of ownership, the prospective owner must notify DADS of the change of ownership by submitting an application for an initial license based on a change of ownership under §92.14 of this subchapter (relating to Initial Application Procedures and Requirements) and the fee required in §92.4 of this chapter (relating to License Fees).

(c) To avoid a facility operating while unlicensed, an applicant must submit an application for an initial license based on a change of ownership at least 30 days before the anticipated date of the sale or other transfer to the new owner. The effective date of the change of ownership cannot precede the date the application is received by DADS' Licensing and Credentialing Section, Regulatory Services Division.

(d) DADS may assess an administrative penalty in accordance with Subchapter H, Division 9 of this chapter (relating to Administra-

tive Penalties) against a person who fails to notify DADS before the effective date of the change of ownership.

(e) Pending DADS' review of the application for an initial license based on a change of ownership, the current license holder must continue to meet all requirements for operation of the facility.

(f) After reviewing the application for an initial license based on a change of ownership, DADS conducts an on-site health inspection to determine if the facility meets the standards for operation and resident care. If the facility is out of compliance with Life Safety Code licensure requirements in Subchapter D of this chapter (relating to Facility Construction), DADS also conducts a Life Safety Code inspection of the facility.

(g) DADS issues the license within 30 days after DADS determines that the applicant and the facility have met the licensure requirements of this section. The issuance of a license constitutes DADS' official written notice to the facility of the approval of the application for a change of ownership.

(h) DADS may deny an application for a change of ownership if the applicant, controlling person, or any person required to submit background and qualification information fails to meet the criteria for a license established in §92.11 of this subchapter (relating to Criteria for Licensing).

(i) If DADS denies an application for an initial license based on a change of ownership, DADS sends the applicant a written notice of the denial and informs the applicant of the applicant's right to request an administrative hearing to appeal the denial. The administrative hearing is held in accordance with Texas Health and Human Services Commission rules at 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

§92.17. Relocation.

(a) Relocation is the closing of a facility and the movement of its residents to another location.

(b) A license holder must not relocate a facility without approval from DADS.

(c) Before a relocation, the license holder must file an application for an initial license for the new location in accordance with §92.14 of this subchapter (relating to Initial Application Procedures and Requirements) and the fee required in §92.4 of this chapter (relating to License Fees).

(d) Residents must not be relocated until the new building has been inspected and approved as meeting the Life Safety Code licensure requirements in Subchapter D of this chapter (relating to Facility Construction).

(e) Following Life Safety Code approval by DADS, the license holder must notify DADS of the date the residents will be relocated.

(f) DADS issues a license for the new facility if the new facility meets the standards of operation and resident care based on an on-site health inspection. The effective date of the license is the date all residents are relocated.

(g) The license holder must continue to maintain the license at the current location and must continue to meet all requirements for operation of the facility until DADS has approved the relocation. The issuance of a license constitutes DADS' approval of the relocation. The license for the current location becomes invalid upon issuance of the new license for the new location.

§92.18. Increase in Capacity.

(a) A license holder must not increase a facility's licensed capacity without approval from DADS.

(b) The license holder must file an application for an increase in capacity in accordance with §92.12 (relating to General Application Requirements) and the fee required in §92.4 of this chapter (relating to License Fees).

(c) The license holder must arrange for an inspection of the facility by the local fire marshal and provide the signed fire marshal approval to DADS.

(d) After DADS' review of an application and after the applicant notifies DADS in writing that the facility is ready for a Life Safety Code (LSC) inspection, DADS staff conduct an on-site LSC inspection of the facility to determine if the facility meets the LSC licensure requirements in Subchapter D of this chapter (relating to Facility Construction).

(e) If the facility fails to meet the LSC licensure requirements within 120 days after the LSC inspection, DADS denies the application for an increase in capacity.

(f) After a facility has met LSC licensure requirements, DADS staff conduct an on-site health inspection to determine if the facility meets the licensure requirements for standards of operation and resident care in Subchapter C of this chapter (relating to Standards for Licensure).

(g) DADS issues a new license with an increased capacity within 30 days after DADS determines that all licensure requirements have been met. DADS may grant approval to occupy the increased capacity once DADS determines that all licensure requirements have been met.

(h) In order to meet the residents' health and safety needs in the event of a fire, natural disaster, or catastrophic event, DADS may grant approval to temporarily exceed a facility's licensed capacity provided the health and safety of residents are not compromised and the facility can meet the required health care service needs of all residents. A facility may exceed its licensed capacity under this circumstance, monitored by DADS staff, until residents can be transferred to a permanent location. DADS will issue authorization for the temporary increase in the facility's licensed capacity. The authorization to temporarily increase the capacity ends when the facility receives written notice from DADS ending the authorization.

§92.19. Decrease in Capacity.

(a) A license holder that wishes to decrease the licensed capacity of the facility must provide written notification to DADS' Licensing and Credentialing Section. The written notification must include the desired capacity for the new license.

(b) Upon receipt of the written notification, DADS issues a new license with the desired capacity as indicated in the written notification.

§92.20. Provisional License.

(a) DADS may issue a six-month provisional license:

(1) in the case of a corporate change of ownership; or

(2) to a newly constructed facility if:

(A) the facility is in compliance with resident care standards;

(B) all local approvals have been obtained;

(C) a complete license application is submitted within 30 days after receipt of all local approval; and

(D) the license fee has been paid.

(b) If the facility does not meet Life Safety Code and physical plant standards, DADS will not issue a permanent license to the facility.

§92.54. Advertisements, Solicitations, and Promotional Material.

An assisted living facility must use its state-issued facility identification number in all advertisements, solicitations, and promotional materials, including yellow pages, brochures, and business cards.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER H. ENFORCEMENT DIVISION 9. ADMINISTRATIVE PENALTIES

40 TAC §92.551

STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities.

The new section implements Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §§247.001 - 247.069.

§92.551. Administrative Penalties.

(a) Assessment of an administrative penalty. DADS may assess an administrative penalty if a license holder:

(1) violates:

(A) Texas Health and Safety Code, Chapter 247;

(B) a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247; or

(C) a term of a license issued under Texas Health and Safety Code, Chapter 247;

(2) makes a false statement of material fact that the license holder knows or should know is false:

(A) on an application for issuance or renewal of a license;

(B) in an attachment to the application; or

(C) with respect to a matter under investigation by DADS;

(3) refuses to allow a DADS representative to inspect:

(A) a book, record, or file that a facility must maintain;

or

(B) any portion of the premises of a facility;

(4) willfully interferes with the work of a DADS representative or the enforcement of this chapter;

(5) willfully interferes with a DADS representative preserving evidence of a violation of Texas Health and Safety Code, Chapter 247; a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247; or a term of a license issued under Texas Health and Safety Code, Chapter 247;

(6) fails to pay an administrative penalty not later than the 30th calendar day after the penalty assessment becomes final; or

(7) fails to notify DADS of a change of ownership before the effective date of the change of ownership.

(b) Criteria for assessing an administrative penalty. DADS considers the following in determining the amount of an administrative penalty:

(1) the gradations of penalties established in subsection (d) of this section;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the situation, and the hazard or potential hazard created by the situation to the health or safety of the public;

(3) the history of previous violations;

(4) deterrence of future violations;

(5) the license holder's efforts to correct the violation;

(6) the size of the facility and of the business entity that owns the facility; and

(7) any other matter that justice may require.

(c) Late payment of an administrative penalty. A license holder must pay an administrative penalty within 30 calendar days after the penalty assessment becomes final. If a license holder fails to timely pay the administrative penalty, DADS may assess an administrative penalty under subsection (a)(6) of this section, which is in addition to the penalty that was previously assessed and not timely paid.

(d) Administrative penalty schedule. DADS uses the schedule of appropriate and graduated administrative penalties in this subsection to determine which violations warrant an administrative penalty. Figure: 40 TAC §92.551(d)

(e) Administrative penalty assessed against a resident. DADS does not assess an administrative penalty against a resident, unless the resident is also an employee of the facility or a controlling person.

(f) Proposal of administrative penalties.

(1) DADS issues a preliminary report stating the facts on which DADS concludes that a violation has occurred after DADS has:

(A) examined the possible violation and facts surrounding the possible violation; and

(B) concluded that a violation has occurred.

(2) DADS may recommend in the preliminary report the assessment of an administrative penalty for each violation and the amount of the administrative penalty.

(3) DADS provides a written notice of the preliminary report to the license holder not later than 10 calendar days after the date on which the preliminary report is issued. The written notice includes:

(A) a brief summary of the violation;

(B) the amount of the recommended administrative penalty;

(C) a statement of whether the violation is subject to correction in accordance with subsection (g) of this section and, if the violation is subject to correction, a statement of:

(i) the date on which the license holder must file with DADS a plan of correction for approval by DADS; and

(ii) the date on which the license holder must complete the plan of correction to avoid assessment of the administrative penalty; and

(D) a statement that the license holder has a right to an administrative hearing on the occurrence of the violation, the amount of the penalty, or both.

(4) Not later than 20 calendar days after the date on which a license holder receives a written notice of the preliminary report, the license holder may:

(A) give DADS written consent to the preliminary report, including the recommended administrative penalty; or

(B) make a written request to the Texas Health and Human Services Commission (HHSC) for an administrative hearing.

(5) If a violation is subject to correction under subsection (g) of this section, the license holder must submit a plan of correction to DADS for approval not later than 10 calendar days after the date on which the license holder receives the written notice described in paragraph (3) of this subsection.

(6) If a violation is subject to correction under subsection (g) of this section, and after the license holder reports to DADS that the violation has been corrected, DADS inspects the correction or takes any other step necessary to confirm the correction and notifies the facility that:

(A) the correction is satisfactory and DADS will not assess an administrative penalty; or

(B) the correction is not satisfactory and a penalty is recommended.

(7) Not later than 20 calendar days after the date on which a license holder receives a notice under paragraph (6)(B) of this subsection (notice that the correction is not satisfactory and recommendation of a penalty), the license holder may:

(A) give DADS written consent to DADS' report, including the recommended administrative penalty; or

(B) make a written request to HHSC for an administrative hearing.

(8) If a license holder consents to the recommended administrative penalty or does not timely respond to a notice sent under paragraph (3) of this subsection (written notice of the preliminary report) or paragraph (6)(B) of this subsection (notice that the correction is not satisfactory and recommendation of a penalty):

(A) the commissioner or the commissioner's designee assesses the recommended administrative penalty;

(B) DADS gives written notice of the decision to the license holder; and

(C) the license holder must pay the penalty not later than 30 calendar days after the written notice given in subparagraph (B) of this paragraph.

(g) Opportunity to correct.

(1) A license holder has an opportunity to correct a violation, except a violation described in paragraph (2) of this subsection, to avoid paying an administrative penalty, if the license holder corrects the violation not later than 45 calendar days after the date the facility receives the written notice described in subsection (f)(3) of this section.

(2) A license holder does not have an opportunity to correct a violation:

(A) that DADS determines results in serious harm to or death of a resident;

(B) described by subsection (a)(2)-(7) of this section;

(C) related to advance directives as described in §92.41(g) of this chapter (relating to Advance Directives);

(D) that is the second or subsequent violation of:

(i) a right of the same resident under §92.125 of this chapter (relating to Resident's Bill of Rights and Provider Bill of Rights); or

(ii) the same right of all residents under §92.125 of this chapter; or

(E) a violation that is written because of an inappropriately placed resident, except as described in §92.41(f) of this chapter (relating to Inappropriate Placement).

(3) Maintenance of violation correction.

(A) A license holder that corrects a violation must maintain the correction. If the license holder fails to maintain the correction until at least the first anniversary of the date the correction was made, DADS may assess and collect an administrative penalty for the subsequent violation.

(B) An administrative penalty assessed under this paragraph is equal to three times the amount of the original administrative penalty that was assessed but not collected.

(C) DADS is not required to offer the license holder an opportunity to correct the subsequent violation.

(h) Hearing on an administrative penalty. If a license holder timely requests an administrative hearing as described in subsection (f)(3) or (f)(7) of this section, the administrative hearing is held in accordance with HHSC rules at 1 TAC Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act).

(i) DADS may charge interest on an administrative penalty. The interest begins the day after the date the penalty becomes due and ends on the date the penalty is paid in accordance with Texas Health and Safety Code, §247.0455(e).

(j) Amelioration of a violation.

(1) In lieu of demanding payment of an administrative penalty, the commissioner may allow a license holder to use, under DADS' supervision, any portion of the administrative penalty to ameliorate the violation or to improve services, other than administrative services, in the facility affected by the violation. Amelioration is an alternate form of payment of an administrative penalty, not an appeal, and does not remove a violation or an assessed administrative penalty from a facility's history.

(2) A license holder cannot ameliorate a violation that DADS determines constitutes immediate jeopardy to the health or safety of a resident.

(3) DADS offers amelioration to a license holder not later than 10 calendar days after the date a license holder receives a final notification of the recommended assessment of an administrative penalty that is sent to the license holder after an informal dispute resolution process but before an administrative hearing.

(4) A license holder to whom amelioration has been offered must:

(A) submit a plan for amelioration not later than 45 calendar days after the date the license holder receives the offer of amelioration from DADS; and

(B) agree to waive the license holder's right to an administrative hearing if DADS approves the plan for amelioration.

(5) A license holder's plan for amelioration must:

(A) propose changes to the management or operation of the facility that will improve services to or quality of care of residents;

(B) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents;

(C) establish clear goals to be achieved through the proposed changes;

(D) establish a time line for implementing the proposed changes; and

(E) identify specific actions the license holder will take to implement the proposed changes.

(6) A license holder's plan for amelioration may include proposed changes to:

(A) improve staff recruitment and retention;

(B) offer or improve dental services for residents; and

(C) improve the overall quality of life for residents.

(7) DADS may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter.

(8) DADS approves or denies a license holder's amelioration plan not later than 45 calendar days after the date DADS receives the plan. If DADS approves the amelioration plan, any pending request the license holder has submitted for an administrative hearing must be withdrawn by the license holder.

(9) DADS does not offer amelioration to a license holder:

(A) more than three times in a two-year period; or

(B) more than one time in a two-year period for the same or a similar violation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER A. INTRODUCTION

40 TAC §§92.2 - 92.4

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities.

The repeal implements Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §§247.001 - 247.069.

§92.2. *Basis and Scope.*

§92.3. *Definitions.*

§92.4. *Types of Assisted Living Facilities.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER B. APPLICATION PROCEDURES

40 TAC §§92.10 - 92.23

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities.

The repeal implements Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §§247.001 - 247.069.

§92.10. *Criteria for Licensing.*

§92.11. *Building Approval.*

§92.12. *Applicant Disclosure Requirements.*

§92.13. *Time Periods for Processing License Applications.*

§92.14. *Increase in Capacity.*

§92.15. *Renewal Procedures and Qualifications.*

§92.16. *Change of Ownership.*

§92.17. *Criteria for Denying a License or Renewal of a License.*

§92.18. *Exclusions.*

§92.19. *Opportunity to Show Compliance.*

§92.20. *License Fees.*

§92.21. *Advertisements, Solicitations, and Promotional Material.*

§92.22. *Provisional License.*

§92.23. *Relocation.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER H. ENFORCEMENT DIVISION 9. ADMINISTRATIVE PENALTIES

40 TAC §§92.551 - 92.595

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities.

The repeal implements Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §§247.001 - 247.069.

- §92.551. *When is an administrative penalty assessed?*
- §92.552. *Who is an administrative penalty assessed against?*
- §92.553. *May DHS assess an administrative penalty against a resident?*
- §92.554. *What is the time frame for paying an administrative penalty?*
- §92.555. *What happens when a license holder fails to timely pay an administrative penalty?*
- §92.556. *Is an administrative penalty assessed under §92.555 of this chapter (relating to What happens when a license holder fails to timely pay an administrative penalty?)?*
- §92.557. *How does DHS determine the amount of the administrative penalty?*
- §92.558. *Can DHS potentially impose an administrative penalty for each violation?*
- §92.559. *What is the administrative penalty schedule?*
- §92.560. *Does DHS assess a penalty when a license holder has no control over the violation?*
- §92.561. *Does DHS assess a penalty when a physician or consultant does not perform their duties?*
- §92.562. *Does DHS issue a preliminary report on the facts of the violation?*
- §92.563. *What does DHS include in the preliminary report?*
- §92.564. *When does DHS issue the preliminary report?*
- §92.565. *What is the purpose of the preliminary report?*
- §92.566. *When does DHS notify a license holder about the preliminary report?*
- §92.567. *What does the DHS notice of the preliminary report include?*
- §92.568. *How may a license holder respond?*
- §92.569. *How long does a license holder have to respond to the preliminary report?*
- §92.570. *What happens if a license holder does not respond timely?*
- §92.571. *Does a license holder have the right to correct violations that result in an administrative penalty in order to avoid an administrative penalty?*
- §92.572. *Which violations cannot be corrected to avoid the assessment of an administrative penalty?*
- §92.573. *What happens if a license holder corrects the violations?*
- §92.574. *How long does a license holder have to correct the violations?*

§92.575. *Is a license holder required to submit a plan of correction if a violation is going to be corrected?*

§92.576. *When must the license holder submit the plan of correction?*

§92.577. *What happens when a license holder reports a violation has been corrected?*

§92.578. *What does DHS decide about the administrative penalty if a license holder reports that a violation has been corrected?*

§92.579. *Does DHS notify a license holder of its determination of the plan of correction?*

§92.580. *What options does a license holder have when DHS determines the correction is not satisfactory?*

§92.581. *How long does a license holder have to respond to the notice that the correction is not satisfactory?*

§92.582. *What happens when a license holder consents to the penalty?*

§92.583. *Does DHS give a license holder notice of the assessed penalty?*

§92.584. *What happens when DHS gives the license holder notice of the penalty decision?*

§92.585. *What happens when a license holder fails to respond to the DHS notice within the 20 calendar days?*

§92.586. *Is a license holder required to maintain correction of a violation?*

§92.587. *What happens when a license holder fails to maintain correction of the violation until at least the first anniversary?*

§92.588. *What is the amount of the penalty assessed when a license holder fails to maintain correction until at least the first anniversary?*

§92.589. *Is DHS required to offer a license holder an opportunity to correct a subsequent violation?*

§92.590. *Does a license holder have administrative appeal rights?*

§92.591. *Where may a license holder find the procedures for administrative appeals?*

§92.592. *Where are the procedures for administrative penalties for notification of recommended assessment, opportunity for hearing, actual assessment, payment of penalty, judicial review, and remittance?*

§92.593. *Where may a license holder find information on formal hearing procedures?*

§92.594. *May DHS charge interest on administrative penalties?*

§92.595. *What authority does DHS have to charge interest on administrative penalties?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 10. AMELIORATION

40 TAC §§92.601 - 92.616

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities.

The repeal implements Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §§247.001 - 247.069.

§92.601. *What is amelioration?*

§92.602. *Who decides if a license holder may ameliorate an administrative penalty?*

§92.603. *How may a license holder request amelioration?*

§92.604. *Does DHS supervise implementation of the plan?*

§92.605. *How may a license holder use the ameliorated portion of the penalty?*

§92.606. *Which violations are prohibited from amelioration?*

§92.607. *When will DHS offer amelioration to a license holder?*

§92.608. *What is the deadline for filing an amelioration plan?*

§92.609. *Does a license holder have a right to an administrative hearing if DHS approves its amelioration plan?*

§92.610. *What happens if a license holder requests an administrative hearing and DHS approves a previously submitted amelioration plan?*

§92.611. *What must be included in a license holder's amelioration plan?*

§92.612. *May a license holder include additional information in the amelioration plan?*

§92.613. *May DHS require changes that exceed the minimum licensing requirements?*

§92.614. *How long does DHS have to decide if the amelioration plan has been accepted?*

§92.615. *Does DHS notify a license holder if the amelioration plan has been accepted?*

§92.616. *When is DHS not allowed to offer amelioration to a license holder?*

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 17. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

The Texas Department of Transportation (department) proposes the repeal of §17.40, Marketing of Specialty License Plates through a Private Vendor and simultaneously proposes new §17.40, Marketing of Specialty License Plates through a Private Vendor; new §17.41, Removal of License Plates and Registration Insignia upon Sale of Motor Vehicle; and amendments to §17.51, Registration Reciprocity Agreements.

EXPLANATION OF PROPOSED REPEAL, AMENDMENTS, AND NEW SECTIONS

The proposed repeal, amendments, and new sections are necessary to implement the provisions of House Bill 310, 80th Legislature, Regular Session, 2007; update and clarify existing information regarding specialty license plates that are marketed by a private vendor; and update or clarify existing information regarding apportioned registration.

House Bill 310 provided for the removal of license plates and registration insignia upon the sale or transfer of a motor vehicle, the disposition of the removed license plates, the transfer of removed license plates to another vehicle, and the process for issuance of a vehicle transit permit to buyers of vehicles from which the license plates were removed.

Section 17.40 is repealed and replaced with new §17.40. Extensive rearrangement of the existing subsections is made to improve readability. Numerous other subsections are added. New §17.40 provides the application requirements and process for approval of new designs submitted by the marketing vendor; clarifies the different types of replacements and the associated fees; provides the vendor the ability to request a redesign of a previously-approved vendor specialty license plate design; establishes the requirements for replacement and associated replacement fees, including replacement of stolen license plates; and adds a process and fees for a person requesting "restyled" license plates. The process for application review and approval of vendor specialty license plates is intended to be similar to the process described in 43 TAC §17.28(i) for development of new

non-vendor specialty license plates. Throughout new §17.40, the term "vendor-marketed specialty license plates" has been simplified to "vendor specialty license plates."

New §17.40(a), Purpose and scope, provides a general description of the section, the statutory citations that authorize the vendor marketing program, and clarification of terminology used in the section.

New §17.40(b), Application for approval of vendor specialty license plate designs, clarifies that each license plate design the vendor proposes to market must be approved by the department. This subsection also provides the requirements for submission of a written application by the vendor and the items that must accompany the application.

New §17.40(c), Review and approval process, establishes that the specialty license plate committee established under 43 TAC §17.28(i) will review the applications and additional documentation provided with the vendor's application. It allows the committee to request additional information and provides that a decision on an application may be postponed until the next committee meeting if the requested additional information is not received.

New §17.40(d), Committee recommendation and public comment, provides the criteria that the committee will use when reviewing and making a recommendation on the proposed vendor specialty license plate designs. Section 17.40(d) also provides that if the committee recommends the issuance of the vendor's proposed specialty license plate design, the design will be posted on the department's website for a 10-day period to receive public comments. The department will notify all specialty plate organizations and the sponsoring agencies who administer license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting, comment period, and manner for submitting public comments.

New §17.40(e), Final approval and specialty license plate issuance, provides that the executive director will make the final decision on the proposed vendor specialty license plate design. If approved, the vendor must submit a non-refundable start-up fee before any action may be taken to process the license plate design. The approved license plate design may not be the final design and the department will work with the vendor to finalize the design to ensure it complies with all format and license plate specifications.

New §17.40(f), Redesign of vendor specialty license plates, allows the vendor to redesign a department-approved vendor license plate by submitting a request and paying a fee that covers the administrative costs of the redesign.

New §17.40(g), Multi-year vendor specialty license plates, allows purchasers the option of purchasing vendor license plates for a one, five, or ten-year period which is the same option as under the repealed §17.40(b).

New §17.40(h), License plate categories and associated fees, provides the categories of specialty license plates that will be marketed by the vendor and the schedule of fees for each category. The vendor will offer the same three categories of specialty license plates as under repealed §17.40(d), but with different names: custom, premium, and luxury. The new names more clearly describe the type of license plates. The name for "Color/Themed" license plates in new §17.40(h)(1) is changed to "custom" license plates because the customer will be able to customize their license plates using the colors and themes available. In new §17.40(h)(2) the name for "Limited Edition/Special Event"

license plates is changed to "premium" license plates because a premium choice for personalization will be available. The name for "Luxury/Prestige" license plates in new §17.40(h)(3) is shortened to "luxury" license plates. The fee schedule remains the same as it was in repealed §17.40(d).

New §17.40(i), Payment of fees, contains the same substance as repealed §17.40(c). It provides that the specialty license plate fee is paid directly to the vendor and that the fees for multi-year specialty license plate fees must be paid at one time to benefit from the reduced fee. The language also provides that specialty license plate fees are in addition to the annual registration fees.

New §17.40(j), Refunds, contains the same substance as repealed §17.40(a). This subsection describes a refund policy for vendor specialty license plates that is identical to the policy for specialty license plates approved by the department.

New §17.40(k), Replacement, reorganizes repealed §17.40(e) and adds new substance. The reorganized portion provides a replacement policy for vendor specialty license plates that is the same as the replacement policy for specialty license plates approved by the department. The application for replacement must be made directly to a county tax assessor-collector. Upon application and payment of the fee for replacement of a license plate an interim temporary tag will be issued by the county tax assessor-collector for use on the vehicle until the vendor specialty license plate has been remanufactured.

New §17.40(k) also adds provisions for no-charge replacements and optional replacements. The term "destroyed" has been replaced with "mutilated" to be consistent with the statutory terminology in Transportation Code, §502.184. Additionally, the fee for lost or mutilated vendor specialty license plates has been changed to reflect that the \$5.30 statutory replacement fee, as provided under Transportation Code, §502.184, for all license plates that are lost or mutilated, will be assessed rather than the fee for replacement of a personalized license plate provided in Transportation Code, §504.101(d).

New §17.40(k)(3) clarifies that vendor specialty license plates will be replaced at no charge every seven years. This period is established to ensure that the license plates meet the requirements established in Transportation Code, §502.052 that license plates be reflectorized to provide effective and dependable brightness for the period for which the plates are issued.

New §17.40(k)(4), Optional replacements, establishes that a \$30 optional replacement fee will be required if the owner of a vendor specialty license plate chooses to obtain a replacement for any reason, other than the license plate being lost or mutilated, before the seventh anniversary of the date of initial issuance.

New §17.40(k)(5), Interim replacement tags, establishes that if the vendor specialty license plates are lost or mutilated to such an extent that they are unusable, replacement license plates will need to be remanufactured and the county tax assessor-collector will issue interim replacement tags until the replacements are available.

New §17.40(k)(6), Stolen vendor specialty license plates, establishes that a replacement vendor specialty license plate indicating the same license plate number will not be issued if a vehicle displaying the vendor specialty license plate or the actual vendor specialty license plate has been stolen. Not issuing a duplicate of a license plate number that has been reported stolen aids law enforcement and the vehicle owner by lessening the possibility

of law enforcement incorrectly identifying a vehicle as stolen and stopping or apprehending the owner in error.

New §17.40(l), Transfer of vendor specialty license plates, contains the same substance as repealed §17.40(f). This section includes a transfer policy for vendor specialty license plates that tracks the provisions of §17.28(e) relating to the transfer policy for specialty plates approved by the department. The language explains when vendor specialty license plates may be transferred between vehicles and prohibits the transfer of vendor specialty license plates between owners.

New §17.40(m), Gift plates, contains the same substance as repealed §17.40(g). This subsection provides a policy for the purchase of vendor specialty license plates as a gift and the procedure for the use of the plates on a motor vehicle. This procedure includes information that will track the name of the recipient and the vehicle identification of the recipient's vehicle.

New §17.40(n), Restyled vendor specialty license plates, advises owners that they may request a restyled vendor specialty license plate and the fees for restyled license plates based on the category of license plate originally purchased. A restyled license plate is a license plate of a different style, but one that is within the same price category and has the same alpha-numeric characters as the originally purchased vendor specialty license plate. The fee for a restyled "custom" license plate is \$95, the fee for a restyled "premium" license plate is \$125, and the fee for a restyled "luxury" license plate is \$145.

New §17.41, Removal of License Plates and Registration Insignia upon Sale of Motor Vehicle, addresses the provisions of House Bill 310.

New §17.41(a), Purpose, explains the purpose of the section to facilitate the transfer of plates to another vehicle owned by the same owner.

New §17.41(b), Disposition of removed license plates, provides information relating to removal and transfer of license plates when a vehicle is sold, traded, or transferred to a licensed motor vehicle dealer or in a private transaction between non-dealers. Section 17.41(b) also provides the criteria for transferring the removed license plates to another vehicle, addresses disposal of removed license plates if they are retained by the vehicle owner, and retention by the vehicle owner for future use on another motor vehicle.

New §17.41(c), Vehicle transit permit, provides information about how a motor vehicle buyer may obtain a vehicle transit permit that authorizes legal movement of the vehicle from the place of purchase when the seller has removed the license plates and registration insignia. The vehicle transit permit is valid for temporary movement of the vehicle for a five-day period, as provided by Transportation Code, §502.454, and must be kept in the vehicle at all times.

Amendments to §17.51, Registration Reciprocity Agreements, add provisions for denial or suspension of apportioned registration as required under the Federal Motor Carrier Safety Administration's (FMCSA) Performance and Registration Information Systems Management program (PRISM) and established by the Transportation Equity Act for the 21st Century (P.L. 105-178). The PRISM system allows information to be shared among participating International Registration Plan (IRP) vehicle registration agencies and the FMCSA to check the safety rating of motor carriers prior to issuing or renewing apportioned registration.

The department will begin piloting the PRISM program in June 2008, including denial or suspension of a registrant's apportioned registration if the registrant or the commercial vehicle being registered has been deemed to be unsafe and placed out of business by the FMCSA. In addition, the department will begin gathering necessary data as required under PRISM during this pilot period. Full implementation will not occur until June 2009.

Amendments to §17.51 also delete all references to temporary operating authority (TOA) permits because the department no longer issues these permits. The department has implemented an automated system for credentialing apportioned motor carriers (TxIRP) that allows for the electronic issuance of a temporary cab card, eliminating the need for TOA permits. The temporary cab card is similar to a TOA permit, but enables the department to better ensure that operating authority is issued only to legitimate motor carriers. Through the automated system, the department gained the capability to electronically issue a temporary cab card to a motor carrier after an interim application for title or registration is submitted. Before the implementation of the automated system, paper TOA permits were issued by multiple entities and could be obtained by a carrier who had not yet submitted an application for title or registration to the department. Some carriers used this process to circumvent the title and apportioned registration requirements and failed to apply for title or pay registration fees for operation of the vehicle as required. With the automated system, the department is better able to audit the temporary cab cards and assist law enforcement in verifying the validity of a motor carrier's registration.

Throughout §17.51, the term "mileage" is changed to "distance" since some carriers measure the distance traveled in kilometers rather than miles. As defined, the term "distance" encompasses distances measured in either miles or kilometers. Additionally, throughout §17.51 the decision-making process for cancellation, enforcement of cancellation, conference, appeal, and reinstatement of cancelled registration is amended to add that in addition to the director, a designee of the director may act.

Additional amendments to §17.51 update terminology to be consistent with the terminology used in the International Registration Plan (IRP) and update or clarify existing information.

Amendments to §17.51(a), Purpose, clarify that the department may enter into agreements relating to the apportionment of registration with foreign countries, as well as with other jurisdictions.

Amendments to §17.51(b), Definitions, add a definition of "distance" established in the IRP Plan that can be applied regardless of whether the distance traveled is measured in miles or kilometers. Subsequent paragraphs are renumbered.

Amendments to §17.51(b)(6) revise the name of the temporary permit that may be issued to motor carriers from "temporary operating authority" to "temporary cab card", and update the length of time for which the permit is valid.

Amendments to §17.51(c)(2)(A) correct terminology.

Amendments to §17.51(c)(2)(B) provide that the department adopts the most currently adopted edition of the International Registration Plan. The specific version adopted was previously cited; however, since the plan provisions are continually amended by plan members, the revised language is more accurate.

Amendments to §17.51(c)(2)(B)(iv) clarify an "established place of business" must be located in this state for purposes of ob-

taining apportioned registration and delete the specific location within the IRP plan of the definition of "established place of business" as the location can change when the plan is amended.

Amendments to §17.51(c)(2)(D) update how the fees associated with apportioned registration applications may be submitted. Registrants may now submit funds by personal check or using an electronic funds transfer process through an automated clearinghouse.

Amendments to §17.51(c)(2)(F) clarify that registrants must provide operational records for each vehicle in their fleet; update terminology from "recap" to "summary"; and add that registrants must provide distance summaries on an annual basis, as well as on a monthly and quarterly basis in accordance with the IRP.

Amendments to §17.51(c)(2)(G) clarify that if the department assesses additional registration fees after conducting an audit, the assessment could be up to 100% of the Texas intrastate registration fees in accordance with IRP. In addition, reference to temporary operating authority (TOA) is deleted since the department no longer issues TOAs.

Amendments to §17.51(c)(2)(I) delete the specific location within the IRP plan of the definition of "established place of business" as the location can change when the plan is amended.

Amendments to §17.51(c)(2)(J)(i) clarify that the registrant's license plates will be cancelled if additional fees assessed are not paid by the date prescribed in the notice.

Amendments to §17.51(c)(2)(J)(ii) indicate that conferences will now be conducted at division headquarters in Austin, rather than at a regional office. Previously, the scheduling and conferences were conducted by a VTR Regional Office supervisor at a regional office. This function has now been centralized so that the few inquiries will be consistently answered by the same staff.

Amendments to §17.51(c)(2)(J)(iii) clarify that an appeal hearing will only be conducted if the registrant makes the request for the hearing within the 20-day period prescribed for submitting the request.

Amendments to §17.51(c)(2)(K) eliminate the requirement that all previously issued apportioned license plates, cab cards, and TOAs have been surrendered to the department before apportioned registration may be reinstated. Surrender of these items is no longer required by the department before reinstatement, because in some cases, such as when the document was lost or destroyed, surrender is not possible.

New §17.51(c)(2)(L) adds that the department will deny issuance of a temporary cab card, suspend apportioned registration, or deny initial or renewal of a registrant's apportioned registration in accordance with the Federal Motor Carrier Safety Administration's (FMCSA) Performance and Registration Information Systems Management (PRISM) program. This program provides the ability for the department to check the safety rating of motor carriers provided by FMCSA before issuing or renewing a temporary cab card or apportioned license plates. An approved safety rating from FMCSA will be required before authorization for or reinstatement of apportioned registration to a motor carrier that was previously denied or suspended under the FMCSA's PRISM program. Former §17.51(c)(2)(L) is deleted in its entirety as the department no longer issues TOAs.

New §17.51(c)(2)(M) provides the procedure for obtaining a temporary cab card. Timeframes are established for submission of the original application documents and fees to the department af-

ter a temporary cab card has been authorized and the penalties for failure to comply with these timeframes are also prescribed.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the repeal, amendments, and new sections as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal, new §17.41, and amendments to §17.51. There will be positive, revenue generating, fiscal implications for the state as a result of enforcing or administering new §17.40.

The contract with the vendor allows the department to recoup all costs incurred. The non-refundable start-up fee and redesign fees will be deposited to the State Highway Fund for cost recoupment. The vendor will also pay \$8 for each set of optional replacement or restyled vendor specialty license plates issued, which will also be deposited to the State Highway Fund for cost recoupment.

Revenue to the General Revenue Fund will be generated as a result of collection of the fees for optional replacement and restyled license plates. The amount to be deposited to the General Revenue Fund for each optional replacement vendor specialty license plate is \$22.00; for a restyled Custom vendor specialty license plate is \$26.10; for a restyled Premium vendor specialty license plate is \$35.10; and for a restyled Luxury vendor specialty license plate is \$41.10. However, the total revenue that will be generated is unknown at this time since the volume of optional replacements and requests for restyled license plates cannot be estimated.

Rebecca Davio, Director, Vehicle Titles and Registration Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeal, amendments, and new sections.

PUBLIC BENEFIT AND COST

Ms. Davio has also determined that for each year of the first five years the repeal, amendments, and new sections are in effect, the public benefit anticipated as a result of enforcing or administering the repeal, new sections, and amendments will be to provide the public with updated information regarding the vendor specialty license plate program including the process for application and department approval of the new designs the vendor submits, the requirements and fees for replacement of vendor plates, and how to obtain restyled license plates. New §17.41 and amended §17.51 also provide vehicle sellers and motor vehicle dealers current information regarding the removal of license plates when a vehicle is sold; inform vehicle buyers of the availability of a vehicle transit permit when the seller has removed the license plates; advise motor carriers of the provisions for denial or suspension of apportioned registration for safety reasons; and notify motor carriers of the expedited process that may be utilized to obtain authorization to operate a newly acquired commercial motor vehicle or one that has been added to their fleet.

There are no anticipated economic costs for persons required to comply with the repeal of §17.40, new §17.40 and §17.41, or amended §17.51, with the exception of §17.51(c)(2)(L), Denial of apportioned registration for safety reasons, which will have an adverse economic effect on small businesses that are not currently complying with current safety regulations and are placed out of service by the Federal Motor Carrier Safety Administration (FMCSA). There are no anticipated economic costs for persons

required to comply with §17.51(c)(2)(J)(ii) which changes the venue for a complaint conference from the regional office to department headquarters because such a conference is extremely infrequent and none are expected. The provision remains in the rule because it is part of the IRP. Since July 2006, the department has had a few registrants raise some questions or concerns about additional registration fees or cancellation of a registrant's apportioned license plates or privileges, but these have been addressed over the phone or through correspondence.

Government Code, §2006.002 requires that, before adopting a rule that may have an adverse economic effect on small businesses, a state agency must prepare an economic impact statement and a regulatory flexibility analysis. The statute defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than \$6 million in annual gross receipts. A "micro-business" is a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has not more than 20 employees.

Approximately 18,000 active apportioned accounts (fleets) were recorded in the TxIRP data base at the end of calendar year 2007. Of these accounts, approximately 13,830 indicated they consist of two trucks/units or less and the department assumes these are independently owned. The department does not maintain data of a nature that would allow the categorization of a particular account under Government Code, Chapter 2006, such as the number of employees or gross receipts. However, the nature of the trucking industry indicates that a large majority of the accounts consist principally of independent owner/operator accounts that would be categorized as small businesses. For the purposes of this impact statement and flexibility analysis, the distinction between "small business" and "micro-business" under Government Code, Chapter 2006 is insignificant and "small business" will be used for both.

The Performance and Registration Information Systems Management (PRISM) is a cooperative effort between state and federal programs to link the vehicle safety performance to the vehicle registration to improve the safety of high risk motor carriers through more accurate identification, treatment, and assessment. The PRISM system will be used by participating states to verify the safety records for commercial truck operators and the commercial vehicles they operate. If it is found that the driver or vehicle has been put out of service (OOS) for safety reasons, the department will deny issuance of apportioned registration (initial or renewal), will suspend existing apportioned registration, or will deny issuance of a temporary cab card.

Although full implementation of PRISM will not begin until June 2009, the department has elected to join the pilot program of the FMCSA system and to begin gathering information required by the FMCSA, beginning July 1, 2008. In addition, to protect the safety of the traveling public, the department will also deny or suspend apportioned registration during this pilot period if a driver or motor carrier has been put OOS by FMCSA for safety violations.

According to FMCSA the average fine that a carrier can be assessed for being put OOS is \$1,500.

According to the Owner Operator Independent Drivers Association (OOIDA) the average per year net income that a motor carrier makes is \$38,000. Based on the assumption that it will take a

motor carrier approximately two weeks to comply with safety requirements after being put OOS, the motor carrier would lose approximately \$1,462 in net income, calculated as follows: \$38,000 (yearly net income) ÷ 52 weeks/year X 2 weeks (to comply) = \$1,462 (net income loss).

Also, based on the typical repairs necessary to bring a commercial vehicle into compliance and any administrative costs involved, the department assumes it will cost carriers approximately \$1,000 to come into compliance with the OOS order.

The total economic impact of \$3,962 is calculated as follows: \$1,500 (average fine) + \$1,462 (net income loss) + \$1,000 (cost to comply) = \$3,962.

This cost will only be experienced by carriers who are not complying with the existing safety regulations. If a carrier is already complying, then it will not be affected.

Government Code, §2006.002, also requires that agencies prepare a regulatory flexibility analysis to analyze alternatives to the proposed rule. These alternatives should be consistent with the health, safety, and environmental and economic welfare of the state; accomplish the objectives of the rule; and minimize adverse impacts on small businesses. The department analyzed several alternatives to meet the goals outlined above.

In preparing the amendments to §17.51 the department considered delaying implementation for three months. With six months left in the end of the calendar year, the effect on small businesses would be that approximately half of the small businesses that require safety improvements would not be denied issuance of apportioned registration, have their existing apportioned registration suspended, or be denied the issuance of a temporary cab card this calendar year, temporarily saving these businesses \$3,962 each. Another alternative is to delay implementation for six months. The effect on small businesses is that none of the small businesses that require safety improvements would have any economic costs this calendar year, temporarily saving a business with an unsafe motor carrier \$3,962. However, assuming, that these businesses would later be denied issuance of apportioned registration, have their existing apportioned registration suspended, or be denied the issuance of a temporary cab card, the out-of-pocket savings would be the temporary use of the \$3,962. The third alternative is for the department not to implement the program. In that case, there would be no economic costs to the small businesses. While the three alternatives would decrease or eliminate costs to small businesses, allowing known, unsafe motor carriers to continue to operate on Texas highways would not be consistent with the health, safety, and environmental and economic welfare of the state, nor would it accomplish the objectives of the rule to ensure the safety of Texas motorists.

FMCSA and the department are not adding to the safety regulations; an enforcement mechanism is added to ensure unsafe motor carriers are not granted operating privileges by the State of Texas. For a small business that is already complying with the safety laws, there would be no economic cost no matter when the program is implemented.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeal of §17.40, new §17.40 and §17.41, and amendments to §17.51 may be submitted to Rebecca Davio, Director, Vehicle Titles and Registration Division, Texas Department of Transportation, 125 East 11th Street,

Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on August 18, 2008.

43 TAC §17.40

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Transportation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §502.0021, which authorizes the department to adopt rules governing the issuance of motor vehicle registration; and Transportation Code, §502.054, which authorizes the department to adopt rules to carry out the International Registration Plan.

CROSS REFERENCE TO STATUTE

Transportation Code, §§502.052, 502.054, 502.184, 502.451 - 502.456, and §§504.851 - 504.852.

§17.40. Marketing of Specialty License Plates through a Private Vendor.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 18, 2008.

TRD-200803661

Bob Jackson

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: August 31, 2008

For further information, please call: (512) 463-8683



43 TAC §§17.40, 17.41, 17.51

STATUTORY AUTHORITY

The amendments and new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §502.0021, which authorizes the department to adopt rules governing the issuance of motor vehicle registration; and Transportation Code, §502.054, which authorizes the department to adopt rules to carry out the International Registration Plan.

CROSS REFERENCE TO STATUTE

Transportation Code, §§502.052, 502.054, 502.184, 502.451 - 502.456, and §§504.851 - 504.852.

§17.40. Marketing of Specialty License Plates through a Private Vendor.

(a) Purpose and Scope. The department will enter into a contract with a private vendor to market department-approved specialty license plates in accordance with Transportation Code, §§504.851 - 504.852. This section sets out the procedure for approval of the design, purchase, and replacement of vendor specialty license plates. In this section, the license plates marketed by the vendor are referred to as vendor specialty license plates.

(b) Application for approval of vendor specialty license plate designs.

(1) Approval required. The vendor shall obtain the approval of the department for each license plate design the vendor proposes to market in accordance with this section and the contract entered into between the vendor and the department.

(2) Application. The vendor must submit a written application on a form approved by the director to the department for approval of each license plate design the vendor proposes to market. The application must include:

(A) a draft design of the specialty license plate;

(B) projected sales of the plate, including an explanation of how the projected figure was determined;

(C) a marketing plan for the plate including a description of the target market;

(D) a licensing agreement from the appropriate third party for any design or design element that is intellectual property; and

(E) other information necessary for the specialty license plate committee to reach a decision regarding approval of the requested vendor specialty plate.

(c) Review and approval process. The specialty license plate committee established under §17.28(i) of this subchapter will review vendor specialty license plate applications.

(1) Committee review. The committee:

(A) will not consider incomplete applications; and

(B) may request additional information from the vendor to reach a decision.

(2) Postponement of decision for additional information.

(A) If the committee reviews an application and determines that additional information is needed, it will postpone the decision on the application until its next meeting.

(B) If the additional requested information is not received before the next committee meeting, the committee will not consider the application and will return it to the vendor as incomplete.

(d) Committee recommendation and public comment.

(1) Recommendation. The recommendation of the committee will be based on:

(A) projected sales of the license plate as demonstrated in the marketing plan and by the listing of target purchasers;

(B) compliance with Transportation Code, §504.851 and §504.852;

(C) the proposed license plate design, including:

(i) whether the design meets the legibility and reflectivity standards established by the department;

(ii) whether the design meets the standards established by the department for uniqueness to ensure that the proposed plate complies with Transportation Code, §504.852(c); and

(iii) other information provided during the application process.

(2) Public comment on proposed design. If the committee recommends the issuance of the proposed vendor specialty license plate design, notice of the proposed design will be posted on the department's web site for public comment. The department simultane-

ously will notify all specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design must be submitted in writing and must be received within 10 days after the date that the notice is first posted on the department's web site.

(e) Final approval and specialty license plate issuance.

(1) Approval. The executive director of the department will make the final decision on the vendor's specialty license plate application based on the committee's recommendation and on all comments received during the period prescribed by subsection (d)(2) of this section.

(2) Application not approved. If the vendor's application is not approved by the executive director, the vendor must submit a new application and supporting documentation for the design to be considered again by the committee.

(3) Issuance of approved specialty plates.

(A) If the vendor's specialty license plate is approved, the applicant must submit the non-refundable start-up fee before any further design and processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The department has final approval of all specialty license plate designs and will provide guidance on the submitted draft design to ensure compliance with the format and license plate specifications.

(f) Redesign of vendor specialty license plates.

(1) On receipt of a written request from the vendor, the department will allow a redesign of a vendor specialty license plate.

(2) The vendor must pay the redesign administrative costs as provided in the contract between the vendor and the department.

(g) Multi-year vendor specialty license plates. Purchasers will have the option of purchasing vendor specialty license plates for a one-year, five-year, or ten-year period.

(h) License plate categories and associated fees. The categories and the associated fees for vendor specialty plates are set out in this subsection.

(1) Custom license plates. Custom license plates include license plates with a variety of pre-approved background and character color combinations that may be customized with either three alpha and two numeric characters or two numeric and three alpha characters. The fees for issuance of custom license plates are \$95 for one year, \$295 for five years, and \$395 for ten years.

(2) Premium license plates. Premium license plates may be customized with up to six alphanumeric characters on colored backgrounds or designs approved by the department. Premium license plates will be made available to coincide with extraordinary events of public interest to Texas registrants. The fees for issuance of premium license plates are \$195 for one year, \$495 for five years, and \$595 for ten years.

(3) Luxury license plates. Luxury license plates may be customized with up to six alphanumeric characters on colored backgrounds or designs approved by the department. The fees for issuance of luxury license plates are \$395 for one year, \$695 for five years, and \$795 for ten years.

(i) Payment of fees.

(1) Payment of specialty license plate fees. The fees for issuance of vendor specialty license plates will be paid directly to the vendor for the license plate category and period selected by the purchaser. A person who purchases a multi-year vendor specialty license plate must pay upon purchase the full fee which includes the renewal fees.

(2) Payment of statutory registration fees. To be valid for use on a motor vehicle, the license plate owner is required to pay, in addition to the vendor specialty license plate fees, any statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(j) Refunds. Fees for vendor specialty license plate fees will not be refunded after an application is submitted to the vendor and the department has approved issuance of the license plate.

(k) Replacement.

(1) Application. An owner must apply directly to the county tax assessor-collector for the issuance of replacement vendor specialty license plates and must pay the fee described in paragraph (2), (3) or (4) of this subsection, whichever applies.

(2) Lost or mutilated vendor specialty license plates. To replace vendor specialty license plates that are lost or mutilated, the owner must pay the statutory replacement fee provided in Transportation Code, §502.184.

(3) No-charge replacement. The owner of vendor specialty license plates will receive at no charge replacement license plates as follows:

(A) one set of replacement license plates on or after the seventh anniversary after the date of initial issuance; and

(B) one set of replacement license plates seven years after the date the set of license plates were issued in accordance with subparagraph (A) of this paragraph.

(4) Optional replacements. An owner of a vendor specialty license plate may replace vendor specialty license plates before the seventh anniversary after the date of issuance by submitting a request to the county tax assessor-collector accompanied by the payment of a \$30 fee.

(5) Interim replacement tags. If the vendor specialty license plates are lost or mutilated to such an extent that they are unusable, replacement license plates will need to be remanufactured. The county tax assessor-collector will issue interim replacement tags for use until the replacements are available. The owner's vendor specialty license plate number will be shown on the interim replacement tags.

(6) Stolen vendor specialty license plates. The county tax assessor-collector will not approve the issuance of replacement vendor specialty license plates with the same license plate number if the department's records indicate that the vehicle displaying that license plate number was reported stolen or the license plates themselves were reported stolen.

(l) Transfer of vendor specialty license plates.

(1) Transfer between vehicles. The owner of a vehicle with vendor specialty license plates may transfer the license plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the plates are transferred:

(A) is titled or leased in the owner's name; and

(B) meets the vehicle classification requirements for that particular specialty license plate.

(2) Transfer between owners. Vendor specialty license plates may not be transferred between persons.

(m) Gift plates.

(1) A person may purchase plates as a gift for another person if the purchaser submits a statement that provides:

(A) the purchaser's name and address;

(B) the name and address of the person who will receive the plates; and

(C) the vehicle identification number of the vehicle on which the plates will be displayed or a statement that the plates will not be displayed on a vehicle.

(2) To be valid for use on a motor vehicle, the recipient of the plates must file an application with the county tax assessor-collector and pay the statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(n) Restyled vendor specialty license plates. A person who has purchased a multi-year vendor specialty license plate may request a restyled license plate at any time during the term of the plate.

(1) For the purposes of this subsection, "restyled license plate" is a vendor specialty license plate that has a different style from the originally purchased vendor specialty license plate but:

(A) is within the same price category; and

(B) has the same alpha-numeric characters and expiration date as the previously issued multi-year license plates.

(2) The fee for each restyled license plate is:

(A) \$95 for a custom license plate as described in subsection (h)(1) of this section;

(B) \$125 for a premium license plate as described in subsection (h)(2) of this section;

(C) \$145 for a luxury license plate as described in subsection (h)(3) of this section.

§17.41. Removal of License Plates and Registration Insignia upon Sale of Motor Vehicle.

(a) Purpose. Transportation Code, Chapter 502, Subchapter I, provides for the removal of the license plates and registration insignia when a motor vehicle is sold or transferred. Motor vehicles eligible for this process are limited to a passenger car or a light truck, as those terms are defined in Transportation Code, §502.001.

(b) Disposition of removed license plates. License plates removed from a motor vehicle by a licensed motor vehicle dealer, as provided in Transportation Code, §502.451(a), or by a motor vehicle owner in a private transaction as provided in Transportation Code, §502.451(a-1), may be:

(1) transferred to another vehicle:

(A) that is titled or will be titled in the same owner name as the vehicle from which the license plates were removed;

(B) that is of the same vehicle classification (passenger car or light truck) as the vehicle from which the license plates were removed;

(C) if the age of the removed license plate is not greater than provided in §17.22(d)(7)(B) of this subchapter which would require a new license plate to be issued; and

(D) upon:

(i) acceptance of a request to transfer the license plate by the county tax assessor-collector in which the application is filed as provided by Transportation Code, §501.023 or §502.002(b), whichever applies; and

(ii) payment of the transfer fee provided in Transportation Code, §502.453;

(2) disposed of in a manner that renders the license plates unusable or that ensures the license plates will not be available for fraudulent use on a motor vehicle; or

(3) retained by the owner of the motor vehicle from which the license plates were removed.

(c) Vehicle transit permit.

(1) Obtaining a vehicle transit permit. A person who obtains a motor vehicle in a private transaction may obtain one vehicle transit permit (temporary single-trip permit), through the department's website at www.txdot.gov if the seller or transferor has removed the license plates and registration insignia.

(2) Restrictions. The permit, which is valid only for the period shown on the permit, may be used for operation of the motor vehicle only as provided in Transportation Code, §502.454, and must be carried in the vehicle at all times.

§17.51. Registration Reciprocity Agreements.

(a) Purpose. To promote and encourage the fullest possible use of the highway system and contribute to the economic development and growth of the State of Texas and its residents, the department is authorized by Transportation Code, §502.054, to enter into agreements with duly authorized officials of other jurisdictions, including any state of the United States, the District of Columbia, a foreign country, a state or province of a foreign country, or a territory or possession of either the United States or of a foreign country, and to provide for the registration of vehicles by Texas residents and nonresidents on an allocation or distance [mileage] apportionment basis, and to grant exemptions from the payment of registration fees by nonresidents if the grants are reciprocal to Texas residents.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Cab card--The apportioned vehicle registration receipt that contains, but is not limited to, the vehicle description and the registered weight at which the vehicle may operate in each jurisdiction.

(2) Department--The Texas Department of Transportation.

(3) Director--The director of the Vehicle Titles and Registration Division, Texas Department of Transportation.

(4) Distance--The distance an apportioned motor vehicle is:

(A) expected to travel in a member jurisdiction during a registration year as reported by an applicant; or

(B) actually operated in a member jurisdiction during a reporting period.

(5) [(4)] Executive director--The chief executive officer of the department.

(6) [(5)] Temporary cab card [operating authority permit]--A temporary registration permit authorized [issued] by the department that allows [authorizes] the operation of a vehicle for 30 [45] days subject to all rights and privileges afforded to a vehicle displaying apportioned registration.

(c) Multilateral agreements.

(1) Authority. The executive director may on behalf of the department enter a multilateral agreement with the duly authorized officials of two or more other jurisdictions to carry out the purpose of this section.

(2) International Registration Plan [~~registration plan~~].

(A) Applicability. The International Registration Plan [~~international registration plan~~] is a registration reciprocity agreement among states of the United States and other jurisdictions providing for payment of registration [~~license~~] fees on the basis of fleet distance [~~miles~~] operated in various jurisdictions. Its purpose is to promote and encourage the fullest possible use of the highway system by authorizing apportioned registration for commercial motor vehicles and payment of appropriate vehicle registration fees and thus contributing to the economic development and growth of the member jurisdictions.

(B) Adoption. The department adopts by reference the most currently adopted edition of the International Registration Plan [~~with Official Commentary, August 22, 1994, edition~~] (IRP). This document will be periodically amended by its members. Copies of the document are available for review in the Vehicle Titles and Registration Division, Texas Department of Transportation, 4000 Jackson Avenue, Austin. Copies are also available on request. The following words and terms, when used in the IRP or in this subparagraph, shall have the following meanings, unless the context clearly indicates otherwise.

(i) Apportionable vehicle--Any vehicle, except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, buses used in transportation of chartered parties, and government-owned vehicles, used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and used either for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property and:

(I) is a power unit having two axles and a gross vehicle weight or registered gross vehicle weight in excess of 26,000 pounds or 11,793.401 kilograms;

(II) is a power unit having three or more axles, regardless of weight;

(III) is used in combination, when the weight of such combination exceeds 26,000 pounds or 11,793.401 kilograms gross vehicle weight; or

(IV) at the option of the registrant, trucks and truck tractors, and combinations of vehicles having a gross vehicle weight of 26,000 pounds or 11,793.401 kilograms or less and buses used in transportation of chartered parties.

(ii) Commercial vehicle--A vehicle or combination designed and used for the transportation of persons or property in furtherance of any commercial enterprise, for hire or not for hire.

(iii) Erroneous issuance--Apportioned registration issued based on erroneous information provided to the department.

(iv) Established place of business--A physical structure owned ~~or~~ leased within the state of Texas ~~or rented~~ by the applicant or fleet registrant and maintained in accordance with the provisions of the International Registration Plan [~~Articles II and IX~~].

(v) Fleet distance [miles]~~--~~All distance [mileage] operated by an apportionable vehicle or vehicles used to calculate registration fees for the various jurisdictions.

(C) Application.

(i) An applicant must submit an application to the department on a form prescribed by the director together with additional documentation as required by the director.

(ii) Upon approval of the application, the department will compute the appropriate registration fees and notify the registrant.

(D) Fees. Upon receipt of the applicable fees in the form of a check [~~other than personal~~], cashier's check, ~~or~~ money order, or electronic funds transfer through an automated clearinghouse (ACH) made payable in United States funds, the department will issue one license plate and cab card for each vehicle registered.

(E) Display.

(i) The license plate issued to a power unit shall be installed on the front of the vehicle, and the license plate issued for a trailer shall be installed on the rear of the vehicle.

(ii) The cab card shall be carried at all times in the vehicle in accordance with Transportation Code, §621.002.

(F) Audit. An audit of the registrant's vehicle operational records may be conducted by the department according to the IRP provisions. Upon request, the registrant shall provide the operational records of each vehicle for audit in unit number order, in sequence by date, and including, but not limited to, a summary [~~recap~~] of distance [mileage] traveled by each individual truck on a monthly, ~~or~~ quarterly, and annual basis with distance [mileage] totaled separately for each jurisdiction in which the vehicle traveled.

(G) Assessment. The department may assess additional registration fees of up to 100% of the Texas registration fees, if an audit conducted under subparagraph (F) of this paragraph reveals that:

(i) the operational records indicate that the vehicle did not generate interstate distance [miles] in two or more member jurisdictions for the distance [mileage] reporting period supporting the application being audited, plus the six-month period immediately following that distance [mileage] reporting period;

(ii) the registrant failed to provide complete operational records; ~~or~~

~~{(iii) the company did not comply with the provisions of subparagraph (L) of this paragraph regarding temporary operating authority permits; or}~~

(iii) ~~{(iv) the distance~~ [mileage] must be adjusted, and the adjustment results in a shortage of registration fees due Texas or any other IRP jurisdiction.

(H) Refunds. If an audit conducted under subparagraph (F) of this paragraph reveals an overpayment of fees to Texas or any other IRP jurisdiction, the department will refund the overpayment of registration fees in accordance with Transportation Code, §502.183, and IRP guidelines. Any registration fees refunded to a carrier for another jurisdiction will be deducted from registration fees collected and transmitted to that jurisdiction.

(I) Cancellation. The director ~~or the director's designee~~ may cancel a registrant's apportioned registration and all privileges provided by the IRP if the registrant:

(i) submits payment in the form of a check that is dishonored;

(ii) files or provides erroneous information to the department; or

(iii) fails to:

(I) remit appropriate fees due each jurisdiction in which the registrant is authorized to operate;

(II) meet the requirements ~~[of Article II 218 and Article IX 906]~~ of the IRP concerning established place of business;

(III) provide operational records in accordance with subparagraph (F) of this paragraph;

(IV) provide an acceptable source document as specified in the IRP; or

(V) pay an assessment pursuant to subparagraph (G) of this paragraph.

(J) Enforcement of cancelled registration.

(i) Notice. If ~~[it is determined that]~~ a registrant is ~~[should be]~~ assessed additional registration fees, as provided in subparagraph (G) of this paragraph, and the additional fees are not paid by the due date provided in the notice or it is determined that a registrant's apportioned license plates and privileges should be canceled, as provided in subparagraph (I) of this paragraph, the director or the director's designee will mail a notice by certified mail to the last known address of the registrant. The notice will state the facts underlying the assessment or cancellation, the effective date of the assessment or cancellation, and the right of the registrant to request a conference as provided in clause (ii) of this subparagraph.

(ii) Conference. A registrant may request a conference upon receipt of a notice issued as provided by clause (i) of this subparagraph. The request must be made in writing to the director or the director's designee within 30 days of the date of the notice. If timely requested, the conference will be scheduled and conducted by the director or the director's designee at division headquarters in Austin [the regional supervisor at the regional office] and will serve to abate the assessment or cancellation unless and until that assessment or cancellation is affirmed or disaffirmed by the director or the director's designee. In the event matters are resolved in the registrant's favor, the director or the director's designee will mail the registrant a notice of withdrawal, notifying the registrant that the assessment or cancellation is withdrawn, and stating the basis for that action. In the event matters are not resolved in the registrant's favor, the director or the director's designee will issue a ruling reaffirming the department's assessment of additional registration fees or cancellation of apportioned plates and privileges. The registrant has the right to appeal in accordance with clause (iii) of this subparagraph.

(iii) Appeal. If a conference held in accordance with clause (ii) of this subparagraph fails to resolve matters in the registrant's favor, the registrant may request an administrative hearing. The request must be in writing and must be received by the director no later than the 20th day following the date of the ruling issued under clause (ii) of this subparagraph. If ~~[timely]~~ requested within the designated period, the hearing will be initiated by the department and will be conducted in accordance with §§1.21 et seq. of this title (relating to Procedures in Contested Cases). Assessment or cancellation is abated unless and until affirmed or disaffirmed by order of the Texas Transportation Commission.

(K) Reinstatement.

(i) The director or the director's designee will reinstate [accept a new application for] apportioned registration to [from] a previously canceled registrant if ~~[=]~~

~~[=]~~ all apportioned license plates, cab cards (if available); and temporary operating authorities have been surrendered to the department;

~~[=]~~ all applicable fees and assessments due on the previously canceled apportioned account have been paid ~~[=]~~ and

~~[=]~~ the applicant provides proof of an acceptable recordkeeping system for a period of no less than 60 days.

~~[=]~~ The application will be processed and 100% registration fees shall be due Texas. Mileage for all other jurisdictions must be shown as an estimate and registration fees in excess of 100% shall be due.

(ii) ~~[=]~~ The application for the following registration year will be processed in accordance with the provisions of the IRP ~~[clause (ii) of this subparagraph if the application for reissuance is submitted after July 1 of the current registration year]~~.

(L) Denial of apportioned registration for safety reasons. The department will comply with the requirements of the Performance and Registration Information Systems Management program (PRISM) administered by the Federal Motor Carrier Safety Administration (FMCSA).

(i) Denial or suspension of apportioned registration. Upon notification from the FMCSA that a carrier has been placed out of service for safety violations, the department will:

(I) deny initial issuance of apportioned registration;

(II) deny authorization for a temporary cab card, as provide for in subparagraph (M) of this subsection;

(III) deny renewal of apportioned registration; or

(IV) suspend current apportioned registration.

(ii) Issuance after denial of registration or reinstatement of suspended registration. The director or the director's designee will reinstate or accept an initial or renewal application for apportioned registration from a registrant who was suspended or denied registration under clause (i) of this subparagraph upon presentation of a Certificate of Compliance from FMCSA, in addition to all other required documentation and payment of fees.

~~[=]~~ Temporary operating authority permit. The director will authorize the issuance of temporary operating authority permits to a registrant to expedite the adding of a vehicle to a specified fleet or to replace the license plate or cab card of a vehicle in that fleet. The registrant must submit an application for the permits to the department on a form prescribed by the director. Upon approval of the application, the department will issue a supply of no fewer than 10 or more than 50 permits to the registrant for a particular fleet subject to the following conditions:

~~[=]~~ The registrant is accountable to the department for all permits issued under this subparagraph. Upon request, the registrant shall present to the department the company copy of all assigned permits and all unassigned permits, still intact, for inspection by the department.

~~[=]~~ No more than one permit will be issued for a particular vehicle in a registration period.

~~[=]~~ Each permit issued in accordance with this subparagraph must be validated by the department before the registrant assigns the permit to a vehicle.

~~[=]~~ The registrant must submit an application for apportioned registration for the vehicle on a form prescribed by the director within 20 calendar days from the date the permit was validated.

{(v)} If it is determined that the permit was validated and an application for apportioned registration for that vehicle was not submitted to the department, the registrant shall pay registration fees to the state for the period the permit was valid.}

{(vi)} If it is determined that a registrant cannot account for a permit, the registrant shall be subject to registration fees due to the state in an amount not to exceed the 45-day period for which each such permit could be valid.}

{(vii)} A registrant's privilege to obtain temporary operating authority permits may be denied if it is determined that the registrant has failed to complete the permit forms properly or has repeatedly been assessed registration fees for the improper use of permits.}

{(viii)} The registrant's refusal to pay registration fees assessed in accordance with clauses (v) and (vi) of this subparagraph may result in the cancellation of all operating privileges in accordance with subparagraph (I) of this paragraph.}

(M) Temporary cab card.

(i) Application. The department may authorize issuance of a temporary cab card to a motor carrier with an established Texas apportioned account for a vehicle upon proper submission of all required documentation, a completed application, and all fees for either:

(I) Texas Certificate of Title as prescribed by Transportation Code, Chapter 501 and §17.3 of this chapter, or

(II) Registration Purposes Only as provided for in Transportation Code, §501.029 and §17.22(b)(4) of this subchapter.

(ii) Title application. A registrant who is applying for a certificate of title as provided for in subparagraph (L)(i)(I) of this paragraph and is requesting authorization for a temporary cab card, must submit a photocopy of the title application receipt issued by the county tax assessor-collectors office to a Vehicle Titles and Registration Division Regional Office by email, fax, overnight mail or in person.

(iii) Registration Purposes Only. A registrant who is applying for Registration Purposes Only under clause (i)(II) of this subparagraph and is requesting authorization for a temporary cab card, must submit an application and all additional original documents or copies of original documents required by the director to a Vehicle Titles and Registration Division Regional Office by email, fax, or overnight mail or in person.

(iv) Department approval. On department approval of the submitted documents, the department will send notice to the registrant to finalize the transaction and make payment of applicable registration fees.

(v) Finalization and payment of fees. To finalize the transaction and print the temporary cab card, the registrant may compute the registration fees through the department's apportioned registration software application, TxIRP system, and

(I) make payment of the applicable registration fees in the form of a check, cashier's check, money order, or electronic funds transfer through an automated clearinghouse (ACH) payable to the department in United States funds; and

(II) afterwards, mail or deliver payment of the certificate of title application fee in the form of a check, certified cashier's check, or money order payable to the county tax assessor collector in the registrant's county of residency and originals of all copied documents previously submitted.

(vi) Deadline. The original documents and payment must be received by the Vehicle Titles and Registration Division Regional Office within 72-hours after the time that the office notified the registrant of the approval to print a temporary cab card as provided in clause (iv) of this subparagraph.

(vii) Failure to meet deadline. If the registrant fails to submit the original documents and required payment within the time prescribed by clause (vi) of this subparagraph, the registrant's privilege to use this expedited process to obtain a temporary cab card will be denied by the department for a period of six months from the date of approval to print the temporary cab card.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 18, 2008.

TRD-200803662

Bob Jackson

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: August 31, 2008

For further information, please call: (512) 463-8683



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 182. USE OF EXPERTS

22 TAC §182.8

The Texas Medical Board withdraws the proposed amendments to §182.8, concerning Expert Panel, which appeared in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3717).

Filed with the Office of the Secretary of State on July 21, 2008.

TRD-200803680

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Effective date: July 21, 2008

For further information, please call: (512) 305-7016



CHAPTER 193. STANDING DELEGATION ORDERS

22 TAC §193.6

The Texas Medical Board withdraws the proposed amendments to §193.6, concerning Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses, which appeared in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3721).

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TRD-200803681

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Effective date: July 21, 2008

For further information, please call: (512) 305-7016



PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §361.1

The Texas State Board of Plumbing Examiners withdraws the proposed amendments to §361.1 which appeared in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3544).

Filed with the Office of the Secretary of State on July 15, 2008.

TRD-200803599

Robert L. Maxwell

Executive Director

Texas State Board of Plumbing Examiners

Effective date: July 15, 2008

For further information, please call: (512) 936-5224



CHAPTER 367. ENFORCEMENT

22 TAC §367.1

The Texas State Board of Plumbing Examiners withdraws the proposed amendments to §367.1 which appeared in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3548).

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TRD-200803600

Robert L. Maxwell

Executive Director

Texas State Board of Plumbing Examiners

Effective date: July 15, 2008

For further information, please call: (512) 936-5224



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 435. FIRE FIGHTER SAFETY

37 TAC §435.1

The Texas Commission on Fire Protection withdraws proposed new §435.1 which appeared in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2269).

Filed with the Office of the Secretary of State on July 14, 2008.

TRD-200803593

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Effective date: July 14, 2008

For further information, please call: (512) 936-3838



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 5. TEXAS FACILITIES COMMISSION

CHAPTER 111. EXECUTIVE ADMINISTRATION DIVISION

SUBCHAPTER A. ADMINISTRATION

1 TAC §§111.1 - 111.8

The Texas Facilities Commission (Commission) adopts the repeal of Chapter 111, Subchapter A, §§111.1 - 111.8, concerning administration. The repeal is adopted without changes to the proposal as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4401).

Justification for the Repeal.

During the Commission's statutorily required rule review of Chapter 111, Commission staff determined that the chapter should be repealed in its entirety and replaced with a new chapter. A concurrent notice of adopted new rules may be found in this issue of the *Texas Register*. Complete comments on the Commission's review of Chapter 111 may be found in the Review of Agency Rules section of the June 6, 2008, issue of the *Texas Register* (33 TexReg 4534).

Summary of Comments.

No comments were received during the 30-day comment period.

Statutory Authority.

The repeal is adopted under Texas Government Code §§661.002(c) (Vernon 2004); 2001.004(1), 2001.021(b), 2001.039(c) (Vernon 2000); 2152.060(a), 2152.064(c) (Vernon Supp. 2007); 2155.076(a) (Vernon 2000); and 2260.052(c) (Vernon Supp. 2007).

Cross Reference to Statute.

The statutory provisions affected by the adopted repeal are Texas Government Code §§661.002 (Vernon 2004); 2001.021 (Vernon 2000); 2152.060, 2152.064 (Vernon Supp. 2007); 2155.076 (Vernon 2000); and 2260.052 (Vernon Supp. 2007).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 18, 2008.

TRD-200803669

Kay Molina

General Counsel

Texas Facilities Commission

Effective date: August 7, 2008

Proposal publication date: June 6, 2008

For further information, please call: (512) 463-7220



CHAPTER 111. ADMINISTRATION

The Texas Facilities Commission (Commission) adopts new Chapter 111, Subchapter A, §111.1 and §111.2, Subchapter B, §§111.20 - 111.24, Subchapter C, §§111.30 - 111.32, and Subchapter D, §111.40 and §111.41 which govern the administrative functions of the Commission. Sections 111.20, 111.21, and 111.31 are adopted with changes to the proposed text, as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4402). Sections 111.1, 111.2, 111.22 - 111.24, 111.30, 111.32, 111.40, and 111.41 are adopted without changes to the proposed text and will not be republished.

Justification for the New Rules.

The new chapter organizes the Commission's rules in a concise, logical manner; provides the Commission the ability to expand the chapter as needed; and satisfies the Commission's statutorily required duty to adopt certain rules.

New Subchapter A is entitled Organization and contains §111.1 and §111.2. These sections set out the organization of the Commission and provide a general delegation of authority to the Executive Director for the day-to-day operations of the agency.

New Subchapter B is entitled General Provisions and contains §§111.20 - 111.24. These sections set out the Commission's rules concerning ethics, historically underutilized businesses, petition for adoption of rules, a sick leave pool, and procedures concerning the training and education of Commission employees. Section 111.20 and §111.21 both incorporate by reference the rules of another state agency and are adopted with changes. The changes are nonsubstantive and are intended to conform the rules to the citation format of the Texas Administrative Code and to make the rules consistent within Chapter 111.

New Subchapter C is entitled Complaints and Dispute Resolution and contains §§111.30 - 111.32. These sections set out procedures for submitting complaints, for negotiation and mediation of certain contract disputes, and for bid protests, dispute resolution and hearings. Section 111.31 incorporates by reference the rules of another state agency and is adopted with changes. The changes are nonsubstantive and are intended to conform the rule to the citation format of the Texas Administrative Code and to make the rules consistent within Chapter 111.

New Subchapter D is entitled Vehicles and contains §111.40 and §111.41. These sections concern the Commission's management of its fleet vehicles and the procedures for the assignment and use of pooled vehicles.

Summary of Comments.

No comments were received during the 30-day comment period.

SUBCHAPTER A. ORGANIZATION

1 TAC §111.1, §111.2

Statutory Authority

The new rules are adopted under Texas Government Code §2001.004(1) (Vernon 2000), which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Cross Reference to Statute.

The statutory provisions affected by the adopted rules are Texas Government Code §§2152.051 (Vernon Supp. 2007), 2152.101 (Vernon 2000), and 2152.103 (Vernon 2000).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kay Molina

General Counsel

Texas Facilities Commission

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For further information, please call: (512) 463-7220



SUBCHAPTER B. GENERAL PROVISIONS

1 TAC §§111.20 - 111.24

Statutory Authority

The new rules are adopted under Texas Government Code §§656.048(a) (Vernon 2004) (employee training and education), 661.002(c) (Vernon 2004) (sick leave pool), 2001.004(1) (Vernon 2000) (rules of practice and procedures), 2001.021(b) (Vernon 2000) (petition for adoption of rules), 2152.064(c) (Vernon Supp. 2007) (ethics rules), and 2161.003 (Vernon 2000) (historically underutilized businesses program), which require the Commission to promulgate rules.

Cross Reference to Statute.

The statutory provisions affected by the adopted rules are Texas Government Code §§656.048 (Vernon 2004), 661.002 (Vernon 2004), 2001.004 (Vernon 2000), 2001.021 (Vernon 2000), 2152.064 (Vernon Supp. 2007), and 2161.003 (Vernon 2000).

§111.20. Ethical Standards.

The Commission adopts by reference the rules of the Texas Ethics Commission in 1 TAC Part 2, Chapter 45 (relating to Conflicts of Interest). The Texas Ethics Commission rules are located at the Office of the Secretary of State's internet website: www.sos.state.tx.us/tac/index.html. The Texas Ethics Commission has specific rulemaking authority relating to the ethical standards set out in Texas Government

Code §2152.064 relating to conflicts of interest in certain transactions by the Texas Facilities Commission.

§111.21. Historically Underutilized Businesses.

In accordance with Texas Government Code §2161.003, the Commission adopts by reference the rules of the Comptroller of Public Accounts in 34 TAC Part 1, Chapter 20, Subchapter B (relating to the Historically Underutilized Business Program). The Comptroller of Public Accounts rules are located at the Office of the Secretary of State's internet website: www.sos.state.tx.us/tac/index.html.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kay Molina

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Texas Facilities Commission

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For further information, please call: (512) 463-7220



SUBCHAPTER C. COMPLAINTS AND DISPUTE RESOLUTION

1 TAC §§111.30 - 111.32

Statutory Authority.

The new rules are adopted under Texas Government Code §§2152.060(a) (Vernon Supp. 2007) (complaints), 2155.076(a) (Vernon 2000) (bid protests, dispute resolution, and hearings), and 2260.052(c) (Vernon Supp. 2007) (negotiation and mediation of contract disputes), which require the Commission to promulgate rules.

Cross Reference to Statute.

The statutory provisions affected by the adopted rules are Texas Government Code §§2152.060 (Vernon Supp. 2007), 2155.076 (Vernon 2000), and 2260.052 (Vernon Supp. 2007).

§111.31. Negotiation and Mediation of Certain Contract Disputes.

(a) The Commission adopts by reference the rules of the Office of the Attorney General in 1 TAC Part 3, Chapter 68 (relating to Negotiation and Mediation of Certain Contract Disputes). The Office of the Attorney General rules are located at the Office of the Secretary of State's internet website: www.sos.state.tx.us/tac/index.html.

(b) The rules set forth a process to permit parties to structure a negotiation or mediation in a manner that is most appropriate for a particular dispute regardless of contract's complexity, subject matter, dollar amount, or method and time of performance.

(c) The adoption of this rule is required by Texas Government Code, Chapter 2260, §2260.052(c).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 18, 2008.

TRD-200803672

Kay Molina
General Counsel
Texas Facilities Commission
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Proposal publication date: June 6, 2008
For further information, please call: (512) 463-7220



SUBCHAPTER D. VEHICLES

1 TAC §111.40, §111.41

Statutory Authority.

The new rules are adopted under Texas Government Code §2171.1045 (Vernon 2000), which requires the Commission to promulgate rules relating to vehicle assignment and use.

Cross Reference to Statute.

The statutory provision affected by the adopted rules is Texas Government Code §2171.1045 (Vernon 2000).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kay Molina

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Texas Facilities Commission

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For further information, please call: (512) 463-7220



CHAPTER 115. FACILITIES LEASING PROGRAM

SUBCHAPTER A. STATE LEASED PROPERTY

1 TAC §§115.1 - 115.3, 115.8, 115.10, 115.13

The Texas Facilities Commission (Commission) adopts amendments to §§115.1 - 115.3, 115.8, and 115.10 which governs leasing facilities for the use and benefit of state agencies; and adopts new §115.13, entitled Best Value Guidelines, which establishes guidelines for determining best value in procurement of leased space. Section 115.8 and new §115.13 are adopted with changes to the proposed text, as published in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3503). The amendments to §§115.1 - 115.3 and 115.10 are adopted without changes to the proposed text and that text will not be republished.

The amendments update references to the Commission's agency name; delete definitions that are no longer in use in this chapter; and correct typographical errors, including reformatting. In addition, the amendments relate to state agency requests for lease space when state-owned space is not available. Furthermore, a new §115.13 establishes guidelines to evaluate proposed lease properties and identify the best value to the State of Texas.

Section 115.1 defines terms used in this chapter. Section 115.2 establishes prerequisites to leasing space, such as state agency requests for lease space and certification of availability of funds. Section 115.3 specifically addresses requests for leasing space by Health and Human Services Commission agencies. Section 115.8 imposes certain requirements on private firms used by the Commission to obtain lease space, including disclosure of any potential conflicts of interest. Section 115.10 discusses tenant agency responsibilities and reporting with respect to leased space. Also, pursuant to statutory rulemaking requirements, a new §115.13, entitled Best Value Guidelines, is added to outline in greater detail the factors considered when the Commission evaluates responses to solicitations associated with the procurement of lease space for the use and benefit of state agencies under Texas Government Code, Chapter 2167 and makes a best value determination on which a solicitation award is based. The Commission makes corrections to the typographical errors found in §115.13(b)(7) by adding the word "of" between the words "security" and "premises"; and in §115.13(c) the word "file" is added between the words "lease" and "of" in the last sentence.

The comment period ended June 2, 2008. One informal comment was received in regards to typographical errors. The Commission agrees and will make the necessary changes to §115.13(b)(7) and §115.13(c).

The amendments and new section are adopted under the Texas Government Code, §2167.0021(b) (Vernon 2000) and §2167.008 (Vernon Supp. 2007), which requires the Commission to adopt rules establishing guidelines to determine best value in lease transactions and to adopt rules necessary to the administration of Commission duties related to State leases.

§115.8. *Use of Private Firms to Obtain Space.*

(a) Any entity that provides lease services to the Commission shall immediately disclose any conflict of interest in a transaction to all parties and shall withdraw from all matters related to the conflict. Final determination of a conflict of interest shall be made by the Commission.

(b) No broker, real estate firm, tenant representative or entity representing the state as an agent in a leasing matter may, during the term of the agency, simultaneously represent, participate or profit from the actions of buyers, sellers, owners or any other entity that possesses an interest in any lease in which the Commissioner is the lessor.

§115.13. *Best Value Guidelines.*

(a) The Commission shall develop procedures, deadlines, site analyses and market analyses to ensure that recommendations for lease procurements reflect the best value to the State of Texas.

(b) In determining the specific procedures to be used to evaluate the properties and identification of the best value to the state, the Commission shall develop and maintain documents in the permanent lease file of the Commission detailing its evaluation of each of the following criteria for all qualified sites selected for final consideration:

- (1) analysis of the total cost of occupancy offered by the proposed Lessor;
- (2) utility costs;
- (3) age, type and condition of the premises;
- (4) costs, if any, of improvements required to meet the approved agency specifications;
- (5) location of the property and access to public facilities and transportation;
- (6) access to and cost of parking;

- (7) security of premises;
- (8) space planning considerations including implementation of the Facilities Master Plan and space consolidation options;
- (9) direct and indirect costs of relocation; and
- (10) any other considerations relevant to the approved agency specifications and existing market conditions.

(c) Prior to making a recommendation to the Commission, an assessment of the proposed Lessor shall be performed to determine the relevant experience, financial condition, and history of bankruptcy, litigation and judgments involving the proposed Lessor, and, as appropriate, its owners, officers, directors, subsidiaries, affiliates, or predecessors that may be relevant indicators of proposed Lessor's ability to perform under the lease contract. The findings of this inquiry shall be maintained in the permanent lease file of the Commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 16, 2008.

TRD-200803653

Kay Molina

General Counsel

Texas Facilities Commission

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Proposal publication date: May 2, 2008

For further information, please call: (512) 463-7220



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 104. CONTINUING EDUCATION

22 TAC §104.1

The Texas State Board of Dental Examiners (Board) adopts amendments to §104.1, concerning Continuing Education Requirements. The amendment is adopted without changes to the proposed text as published in the January 18, 2008, issue of the *Texas Register* (33 TexReg 472) and will not be republished.

The amendment allows active Board members who serve as Examiners for the Western Regional Examining Board (WREB) to earn up to six hours of continuing education credit per year from WREB's calibration and standardization exercise. Additionally, the rule allows licensees who reside outside the United States to complete their continuing education requirements through self-study, allows licensees to count some risk-management continuing education towards their annual hours required for licensure, allows licensees to count up to six hours of self-study towards their annual hours, and prohibits licensees from counting finance coursework towards the annual hours required for licensure. Some paragraphs were re-ordered for clarification and ease of reference.

The Board received one letter in support of the amendment from the Texas Dental Hygienists' Association (TDHA). TDHA also requested that the board consider accepting up to 3 hours of continuing education in the areas of cultural competence and/or

information technology. The TSBDE appreciates the comments of the TDHA. No changes were made to the text based upon the comments received.

These amendments are adopted under Texas Government Code, §§2001.021, et seq., Texas Civil Statutes; and the Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 18, 2008.

TRD-200803660

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Effective date: August 7, 2008

Proposal publication date: January 18, 2008

For further information, please call: (512) 475-0972



PART 9. TEXAS MEDICAL BOARD

CHAPTER 161. GENERAL PROVISIONS

22 TAC §161.6, §161.8

The Texas Medical Board (Board) adopts amendments to §161.6, relating to Committees of the Board, and §161.8, relating to Deputy Executive Director, without changes to the proposed text as published in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3707) and will not be republished.

The amendments to §161.6 update the duties of the Licensure Committee and amendments to §161.8 update the name of the Deputy Executive Director to Chief of Staff.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts the rule review of Chapter 161, General Provisions.

Prior to publishing the proposed amendments, the Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on March 19, 2008. The comments were incorporated into the published proposed rules.

The Board received no public written comments and no one appeared to testify at the public hearing held on June 27, 2008.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 21, 2008.

TRD-200803682

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Texas Medical Board
Effective date: August 10, 2008
Proposal publication date: May 9, 2008
For further information, please call: (512) 305-7016



CHAPTER 163. LICENSURE

22 TAC §§163.4 - 163.6, 163.10, 163.11

The Texas Medical Board (Board) adopts amendments to §163.4, relating to Procedural Rules for Licensure Applicants, §163.5, relating to Licensure Documentation, §163.6, relating to Examinations Accepted for Licensure, §163.10, relating to Relicensure and §163.11, relating to Active Practice of Medicine, without changes to the proposed text as published in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3708) and will not be republished.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts the rule review of Chapter 163, Licensure.

Prior to publishing the proposed amendments, the Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on March 19, 2008. The comments were incorporated into the published proposed rules.

The Board received comments regarding the rule review and the proposed rules from two individuals.

COMMENT NO. 1. The two commenters commented that §163.6 should be amended to provide greater opportunity for applicants who have failed a licensure examination more than three times to become licensed by taking other factors into consideration.

Response to Comment No.1. The Board disagrees with these comments. The proposed change to the rule conforms the rule to statutory changes made by the Legislature in 2007. The Board should not expand on these statutory provisions at this time. For these reasons, the Board does not believe that any changes should be made to the rule as published. The Board has adopted amendments to §163.6, as published, without changes.

The Board has determined that the authority of the Executive Director to determine applicants ineligible should be limited to specific statutory or rule provisions; the rule should be clarified to specify that an applicant must submit documentation regarding inpatient treatment and language regarding alcohol/substance disorder and physical illness that did or could have impaired an applicant's ability to practice; the rule should be updated to conform to statutory requirements adopted by the Legislature in 2007; the rule should be updated to reflect changes to other rules requiring that the jurisprudence examination be taken only once; the reference to "passage of SPEX examination" should be deleted as a stated remedy for applicants who cannot demonstrate that they have been in the active practice of medicine; the SPEX Examination would still be available as a remedy, but only if approved in advance by the Board.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which

provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
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For further information, please call: (512) 305-7016



CHAPTER 166. PHYSICIAN REGISTRATION

22 TAC §§166.1, 166.2, 166.5, 166.6

The Texas Medical Board (Board) adopts amendments to §166.1, relating to Physician Registration, §166.2, relating to Continuing Medical Education, §166.5, relating to Relicensure, and §166.6, relating to Exemption From Registration Fee for Retired Physician Providing Voluntary Charity Care, without changes to the proposed text as published in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3710) and will not be republished.

The amendments update the rules to conform with biennial registration, updates references to Chapter 190 of the Board's Rules, and clarifies that relicensure is required in the case of either relinquishment or voluntary surrender of a license.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts the rule review of Chapter 166, Physician Registration.

Prior to publishing the proposed amendments, the Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on March 19, 2008. The comments were incorporated into the published proposed rules.

The Board received no public written comments and no one appeared to testify at the public hearing held on June 27, 2008.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Proposal publication date: May 9, 2008
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CHAPTER 169. AUTHORITY OF PHYSICIANS TO SUPPLY DRUGS

22 TAC §169.2

The Texas Medical Board (Board) adopts amendments to §169.2, concerning Definitions, without changes to the proposed text as published in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3711) and will not be republished.

The amendments update name of Texas Medical Board.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts the rule review of Chapter 169, Authority of Physicians to Supply Drugs.

Prior to publishing the proposed amendments, the Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on March 19, 2008. The comments were incorporated into the published proposed rules.

The Board received no public written comments and no one appeared to testify at the public hearing held on June 27, 2008.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-7016

CHAPTER 171. POSTGRADUATE TRAINING PERMITS

The Texas Medical Board (Board) adopts amendments to §171.3, relating to Physician-in-Training Permits, §171.4, relating to Board-Approved Fellowships, and §171.6, relating to Duties of Program Directors to Report, and the repeal and revision of §171.5, relating to Institutional Permits, without changes to the proposed text as published in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3712) and will not be republished.

The Board has determined that the name of the agency should be updated; the period for updating PIT Permits should be extended; and the Executive Director should be authorized to approve applications, refer to committee, and determine ineligibility in limited circumstances; the provision regarding fellowships approved before September 1, 2006 is obsolete and should be deleted; the provision regarding institutional permits, which have been replaced by Physician-in-Training Permits, is obsolete and should be deleted and replaced by a new provision regarding the duty of PIT Holders to report; and there is a need to extend from 7 to 30 days the period during which program directors are required to report certain matters to the Board.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts the rule review of Chapter 171, Postgraduate Training Permits.

Prior to publishing the proposed rules, the Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on March 19, 2008. The comments were incorporated into the published proposed rules.

The Board received no public written comments and no one appeared to testify at the public hearing held on June 27, 2008.

22 TAC §§171.3 - 171.6

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Medical Board
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For further information, please call: (512) 305-7016

22 TAC §171.5

The repeal is adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §153.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 172. TEMPORARY AND LIMITED LICENSES

The Texas Medical Board (Board) adopts amendments to §172.1, relating to Purpose, §172.2, relating to Construction and Definitions, §172.3, relating to Distinguished Professors Temporary License, §172.6, relating to Visiting Professor Temporary License, §172.8, relating to Faculty Temporary License, and §172.13, relating to Conceded Eminence, without changes to the proposed text as published in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3714) and will not be republished.

The Board has determined that the citation to the Medical Practice Act should be added for clarity; the rule should be conformed with other rules regarding the authority of the Executive Director to issue a temporary license, refer to committee, or determine ineligibility in limited circumstances; the rule is more flexible if medical schools are referred to as accredited by certain organizations rather than listing the schools; the rule is more flexible if medical schools are referred to as accredited by certain organizations rather than listing the schools; the rule is more flexible if medical schools are referred to as accredited by certain organizations rather than listing the schools; and the rule should be clarified to state that a medical school must be accredited by certain organizations.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts the rule review of Chapter 172, Temporary and Limited Licenses.

Prior to publishing the proposed amendments, the Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on March 19, 2008. The comments were incorporated into the published proposed rules.

The Board received no public written comments and no one appeared to testify at the public hearing held on June 27, 2008.

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

22 TAC §172.1, §172.2

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. TEMPORARY LICENSES

22 TAC §§172.3, 172.6, 172.8

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Medical Board
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For further information, please call: (512) 305-7016



SUBCHAPTER C. LIMITED LICENSES

22 TAC §172.13

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Medical Board
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For further information, please call: (512) 305-7016



CHAPTER 184. SURGICAL ASSISTANTS

22 TAC §§184.1, 184.2, 184.4 - 184.6, 184.8, 184.9, 184.18 - 184.20, 184.26

The Texas Medical Board (Board) adopts amendments to §184.1, Purpose, §184.2, Definitions, §184.4, Qualifications for Licensure, §184.5, Procedural Rules for Licensure Applicants, §184.6, Licensure Documentation, §184.8, License Renewal, §184.9, Relicensure, §184.18, Administrative Penalties, §184.19, Complaint Procedure Notification, §184.20, Investigations, and §184.26, Voluntary Relinquishment or Surrender of a License, without changes to the proposed text as published in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3717) and will not be republished.

The Board has determined that the rule should be clarified by adding a reference to the Medical Practice Act and the Surgical Assistants Act, authorizing the rules; the rule should be clarified to state that educational programs must be approved by certain organizations as well as clarifying requirements for examinations; the obsolete provision regarding an applicant who applied prior to September 1, 2002 should be deleted; the reference to alcohol/substance disorder should be updated; the rule should be clarified by setting forth requirements that an applicant must furnish supplemental explanations and prohibiting a Surgical Assistant from using the identification as a Surgical Assistant after a license is expired; the rule should be clarified to provide that a license shall be considered to be cancelled if expired more than one year; and the rule should be updated to refer to provisions in chapter 187 regarding the imposition of an administrative penalty; the rule should be clarified by updating references to other Board rules.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts the rule review of Chapter 184, Surgical Assistants.

Prior to publishing the proposed amendments, the Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on March 19, 2008. The comments were incorporated into the published proposed rules.

The Board received no public written comments and no one appeared to testify at the public hearing held on June 27, 2008.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 21, 2008.

TRD-200803691

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Effective date: August 10, 2008

Proposal publication date: May 9, 2008

For further information, please call: (512) 305-7016



CHAPTER 193. STANDING DELEGATION ORDERS

The Texas Medical Board (Board) adopts the amendments to §193.1, relating to Purpose, §193.2, relating to Definitions, §193.4, relating to Scope of Standing Delegation Orders, §193.7, relating to Delegated Drug Therapy Management, §193.8, relating to Delegated Administration of Immunizations or Vaccinations by a Pharmacist under Written Protocol, §193.9, relating to Pronouncement of Death, and §193.10, relating to Collaborative Management of Glaucoma, and the repeal of §193.11, relating to Use of Lasers, without changes to the proposed text as published in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3721) and will not be republished.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously withdraws the proposed amendments to §193.6, relating to Delegation of the Carrying Out or Signing of Prescription Drug Order to Physician Assistants and Advanced Practice Nurses.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts the rule review of Chapter 193, Standing Delegation Orders.

The amendment to §193.1 updates the name of Texas Medical Board. The amendment to §193.2 updates the name of Texas Physician Assistant Board. The amendment to §193.4 clarifies that pre-signed prescriptions shall be utilized by the authorizing physician only under certain conditions. The amendment to §193.7 and §193.8 updates the reference to Texas Pharmacy Act. The amendment to §193.9 updates the reference to Texas Medical Practice Act. The amendment to §193.10 updates the reference to Texas Optometry Act and name of Texas Medical Board. The repeal of §193.11 will delete the rule regarding use of a laser/pulsed light device.

The Board received written comments regarding §193.6 from the Coalition for Nurses in Advanced Practice (CNAP), the Texas Board of Nursing (TBN), the Texas Nurses Association (TNA), and the Texas Health Care Associates (THCA). Mr. Jim Willmann, General Counsel and Director of Government Affairs, appeared and testified on behalf of TNA.

COMMENT NO. 1. CNAP, TBN, TNA commented that the proposed amendments to §193.6(b)(2)(B) directly conflicts with the Texas Occupations Code, §157.052(e)(2).

Response to Comment No. 2. The Board has responded to this comment by withdrawing proposed amendments to §193.6.

COMMENT NO. 2. CNAP commented that with the proposed amendments to §193.6(b)(2)(B), a physician would have to be onsite as frequently or even more than the APN or PA and possibly more often than the clinic is open in order to delegate prescriptive authority. Taking into consideration that many APNs visit clinics in medically underserved areas only once a week or sometimes even just once a month, CNAP fails to see the merit in the proposed change. Similarly, TBN stated that APNs generally visit medically underserved sites only once or twice a month. Accordingly, TBN feels that it makes more sense for the frequency of physician visits to coincide with the APN's time at the clinic since the purpose of Chapter 193 is to regulate physicians' delegation of prescriptive authority. TNA, likewise, feels that the modified language will reduce the viability of clinics serving medically underserved populations since many of them are only open once or twice a week if not less. CNAP submitted its own suggestion for clarifying §193.6(b)(2)(B).

Response to Comment No. 3. The Board has responded to this comment by withdrawing the proposed amendments to §193.6.

The Board believes that the language proposed by CNAP should not be adopted without further review and stakeholder comment.

COMMENT NO. 3. Regarding the proposed changes to §193.6(b)(2)(B)(iii), CNAP generally agrees with the clarifying language but suggests deleting the countersignature requirement as it raises the issue of physician liability and because it seems unnecessary considering that the physician is already required to sign a documentation of supervision. Furthermore, because the purpose of §193.6 concerns the delegation of prescriptive authority, CNAP finds that substituting the random chart review requirement with a review of charts of patients for whom the APN or PA prescribed medications since the physician's last onsite visit would be more appropriate. CNAP submitted its own suggestion for language for this section.

Response to Comment No. 4. The Board has responded to this comment by withdrawing the proposed amendments to §193.6.

COMMENT NO. 4. Depending on Texas Medical Board's (TMB) intention behind the proposed changes to §193.6(d)(3)(A), CNAP will either support or oppose the modification. If the interpretation behind the proposed language is that physicians are to spend 20% of their time while the clinic is open with each APN or PA practicing at the site, then CNAP rejects the change and strongly recommends deleting "that the alternate practice site is open" from the rule. However, if TMB meant that the physician is in the alternate practice site 20% of the time it is open, regardless of which APN or PA practices in the site at the time, then CNAP supports TMB's proposal. TNA also disagrees with requiring physicians to be onsite only if an APN or PA is on site as well in that it may limit the amount of time delegating physicians will be on site providing care to patients.

Response to Comment No. 5. The Board has responded to this comment by withdrawing the proposed amendments to §193.6.

COMMENT NO. 5. With respect to the proposed amended language of §193.6(e)(3), CNAP, TNA, and THCA, oppose requiring physicians to spend the majority of their time onsite at the facility and find it inconsistent with §157.054, Texas Occupations Code. CNAP states that the latter does not specify that physicians spend majority of their time at the facility or that the physician is even facility-based. CNAP points out that physicians with delegating prescriptive authority are often medical school faculty members who not only see patients at the hospital but also teach, staff clinics, or conduct research. In addition, physicians who serve as medical directors in long-term care facilities or as chief of staffs in small community hospitals also have private practices. By requiring physicians to spend the majority of their time onsite at the facility, the added requirement may reduce the use of APNs and PAs and thus diminish access to care for patients. As such, CNAP recommends deleting the proposed changes and retaining the original rule. TBN also indicates that the Texas Occupations Code does not call for any specific time commitment for a physician in a facility-based practice and only requires that physicians who delegate prescriptive authority in such sites hold certain positions within the facility. Furthermore, TBN suggests that because the existing statute requires only continuous supervision and not necessarily a constant physical presence, physicians can achieve oversight via the use of tele-health technology. TNA is also concerned that the new language would limit the use of APNs and PAs in facility-based practices in rural hospitals, hospitals in underserved areas, and in long-term care facilities. TNA also finds that the change would preclude delegating prescriptive authority at a physician's office practice since it would qualify as a primary practice site. THCA argues that physi-

cians generally do not spend 51% or more of their time in nursing facilities. Thus, THCA opposes the proposed change, which it believes would eliminate APNs or PAs from having prescriptive authority in nursing homes under the facility-based, practice-site designation.

Response to Comment No. 6. The Board has responded to this comment by withdrawing the proposed amendments to §193.6.

The Board received written comments regarding the proposed repeal of §193.11 from The Manufacturers of Equipment for Light-Based Aesthetics (MELA). Ms. Jennifer Riggs, representing the Texas Association of Cosmetics (TAC), and Jeanne Southern, M.D., appeared and testified.

COMMENT NO. 6. MELA, TAC, and Dr. Southern submitted comments supporting the proposed repeal of §193.11.

Response to Comment No. 7. The Board has adopted the proposed repeal of §193.11.

22 TAC §§193.1, 193.2, 193.4, 193.7 - 193.10

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 21, 2008.

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Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Effective date: August 10, 2008

Proposal publication date: May 9, 2008

For further information, please call: (512) 305-7016



22 TAC §193.11

The repeal is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 19. AGENTS' LICENSING SUBCHAPTER K. CONTINUING EDUCATION, ADJUSTER PRELICENSING EDUCATION PROGRAMS, AND LONG-TERM CARE PARTNERSHIP CERTIFICATION COURSES

28 TAC §§19.1001, 19.1002, 19.1005 - 19.1007, 19.1009, 19.1011, 19.1012, 19.1014, 19.1022, 19.1023

The Commissioner of Insurance adopts amendments to §§19.1001, 19.1002, 19.1005 - 19.1007, 19.1009, 19.1011, 19.1012, and 19.1014 and new §19.1022 and §19.1023, concerning long-term care partnership certification and continuing education courses and licensee training requirements. The amendments and new sections are adopted without changes to the proposed text published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2512).

REASONED JUSTIFICATION. The adopted amendments and new sections are necessary to implement Senate Bill (SB) 22, enacted by the 80th Legislature, Regular Session, effective March 1, 2008, which amends the Human Resources Code Chapter 32 and the Insurance Code Chapter 1651 to establish a long-term care partnership program in Texas. The Department posted an informal working draft of the proposed amendments and new sections on the Department's internet website from September 17 to September 28, 2007, and invited public input. The Department received one comment on the informal working draft proposal, agreed with the commenter, and revised the proposed amendments and new sections accordingly. The Department formally proposed the amendments and new sections in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2512). The Department received no comments and no requests for a hearing on the proposal.

SB 22 requires each individual who sells a long-term care benefit plan under the partnership for long-term care program to complete training and demonstrate evidence of an understanding of these plans and how they relate to other public and private coverage of long-term care. SB 22 requires the Texas Health and Human Services Commission (HHSC) to provide information and technical assistance to the Department regarding its role in ensuring that each individual who sells a long-term care benefit plan under the partnership for long-term care program receives the required training and demonstrates evidence of an understanding of these plans. Additionally, SB 22 specifically requires such training to satisfy the training requirements imposed under the provisions governing the expansion of a state long-term care partnership program established under the federal Deficit Reduction Act of 2005 (DRA) (Pub. L. No. 109-171). Section 6021 of the DRA amends §1917(b) of the Social Security Act (42 U.S.C. §1396(p)(b)) to provide for the expansion of a qualified state long-term care insurance partnership program. In order to qualify as a state long-term care insurance partnership program, a state must submit a state plan amendment to the U.S. Department of Health and Human Services for approval that, at a minimum, meets the required elements set out in §6021(a)(1)(A)(iii)

of the DRA. Specifically, §6021(a)(1)(A)(iii)(V) requires the state Medicaid agency to provide information and technical assistance to the state insurance department on its role of assuring that any individual who sells a long-term care insurance policy under the partnership receives training and demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care. The DRA does not prescribe any further training requirements, nor does it elaborate on the content of, or the procedures for, meeting the prescribed training requirements. Similarly, while SB 22 incorporates the training requirements of the DRA into its own provisions, it also does not elaborate on the elements necessary to satisfy the prescribed training requirements.

Section 6021(a)(1)(A)(iii)(III) of the DRA requires a qualified state long-term care partnership policy to meet several of the requirements of the Long-Term Care Insurance Model Act (Model Act) and the Long-Term Care Insurance Model Regulation (Model Regulation) promulgated by the National Association of Insurance Commissioners (NAIC). While the NAIC Model Act and the NAIC Model Regulation both prescribe requirements related to long-term care insurance policies, only the NAIC Model Act contains specific licensee training requirements related to the sale, solicitation, and negotiation of long-term care insurance. Neither the DRA nor SB 22 specifically requires the Department to consider the NAIC Model Act in adopting long-term care partnership training requirements. Nevertheless, the Department has determined that it is important that the Department consider the provisions of the NAIC Model Act in formulating its long-term care partnership training requirements for several reasons. First, modeling the Department's long-term care partnership training requirements on the long-term care training requirements of the NAIC Model Act will help ensure consistent regulation of the long-term care partnership market in Texas. Each provision of the NAIC Model Act, including the requirements specifically related to long-term care insurance policies and long-term care insurance training, is intended to function together to form a cohesive set of regulations for the long-term care market. SB 22 requires the Department to adopt minimum standards for a long-term care benefit plan that may qualify as an approved plan under the partnership for long-term care program. The standards must be consistent with provisions governing the expansion of a state long-term care partnership program established under the DRA. One of the requirements under the DRA is that a long-term care partnership policy meet several of the long-term care insurance policy requirements of the NAIC Model Act and the NAIC Model Regulation. Because a long-term care partnership policy must meet several of the long-term care insurance policy requirements of the NAIC Model Act, it is especially important that the long-term care partnership training regulations adopted by the Department operate compatibly with those requirements. Modeling the Department's long-term care partnership training requirements on the training requirements of the NAIC Model Act will ensure such compatibility and consistency. This is because, like the Department's long-term care partnership insurance policy requirements, the Department's long-term care partnership training regulations will also be based on the framework of the NAIC Model Act. Because all the provisions of the NAIC Model Act were purposefully developed to function together, regulations modeled after those provisions should also function together. Second, both long-term care insurance and long-term care partnership insurance function in a similar capacity. Because of the similarities between the two insurance products, a licensee should develop an understanding of long-term care insurance before

mastering the more complex aspects of long-term care partnership insurance, such as asset disregard and Medicaid eligibility requirements. The training requirements of the NAIC Model Act are designed to focus on the core concepts and requirements of long-term care insurance. Including those provisions in the Department's long-term care partnership training requirements should first assist licensees in acquiring an understanding of the basic concepts and requirements of long-term care insurance. Licensees should then be able to supplement this foundation with an understanding of the more complex requirements of long-term care partnership insurance. Third, the provisions of the NAIC Model Act facilitate flexibility and innovation in the development of long-term care insurance coverage. Thus, the provisions of the NAIC Model Act provide for consideration of state long-term care insurance partnership programs where such programs have been approved and are operational. For example, the NAIC Model Act requires long-term care insurance training to include topics related to long-term care insurance, long-term care services, and if applicable, qualified state long-term care insurance partnership programs. Including the relevant training requirements of the NAIC Model Act that specifically relate to long-term care partnership policies in the Department's long-term care partnership training requirements will also assist licensees in developing a basic understanding of long-term care partnership insurance. Lastly, the provisions of the NAIC Model Act provide uniform, standardized training requirements that facilitate reciprocity among states implementing long-term care partnership programs. The Department's long-term care partnership training requirements incorporate the majority of the provisions of the NAIC Model Act. These adopted requirements are intended to promote reciprocal treatment of long-term care partnership training requirements among the ten other states (Florida, Idaho, Minnesota, Nebraska, North and South Dakota, Maine, Missouri, Oregon, and Rhode Island) that are currently implementing long-term care partnership programs that will also incorporate the majority of the provisions of the NAIC Model Act and among other states that may implement similar programs in the future.

The training framework of the NAIC Model Act is comprised of a one-time training course that an individual must complete in order to sell, solicit, or negotiate long-term care insurance, and where applicable, long-term care partnership insurance. The individual must also be licensed as an insurance producer for accident and health or sickness or other lines of authority, as applicable. The NAIC Model Act also provides that an individual already licensed and selling, soliciting, or negotiating long-term care insurance on the effective date of the enacting legislation may not continue to sell, solicit, or negotiate long-term care insurance unless the individual has completed a one-time training course within one year from the effective date of the applicable enacting legislation. In addition to the one-time training course, the NAIC Model Act requires an individual who sells, solicits, or negotiates long-term care insurance, and where applicable, long-term care partnership insurance, to complete ongoing training every 24 months thereafter. The one-time training course must be no less than eight hours in length, and the ongoing training must be no less than four hours every 24 months. The NAIC Model Act also allows both the one-time training course and the ongoing training to be approved for continuing education credit. The NAIC Model Act also requires specific topics related to long-term care insurance, long-term care services, and, where applicable, qualified long-term care insurance partnership programs, to be included in the one-time training course and the ongoing training. The NAIC Model Act prohibits any training from including insurer

or company product specific information or materials. Additionally, the NAIC Model Act requires insurers to obtain verification that an individual has received the appropriate training, to maintain records of such verification, and to make such verification available to the Commissioner upon request. Lastly, the NAIC Model Act provides for reciprocity among states with regard to the training requirements.

As required by the DRA and SB 22, the Department met with the state's Medicaid agency, the Texas Health and Human Services Commission (HHSC), in August, 2007 and again in September, 2007 to discuss the Department's role in ensuring that each individual who sells a long-term care benefit plan under the partnership for long-term care program receives training and demonstrates evidence of an understanding of these plans. The Department and HHSC staff generally discussed the training provisions of the NAIC Model Act; the Department's existing process for certifying long-term care insurance continuing education courses and providers, whether long-term care partnership certification and continuing education courses and providers could be successfully integrated into the Department's existing processes; insurer, licensee, and provider reporting requirements; and reciprocity among the states with respect to long-term care partnership training requirements. Additionally, the Department and HHSC staff identified elements unique to long-term care partnership insurance that should be included in the Department's training requirements. As a result of HHSC's recommendations and technical assistance, the Department has incorporated two additional elements, Medicaid eligibility criteria and asset disregard, into the subject matter that must be included in a Department certified long-term care partnership certification course. The adopted sections also provide a web site address maintained by the Texas Department of Aging and Disability Services (DADS), where providers and licensees may obtain additional information and resource material regarding the long-term care partnership program, including a section of the website entitled "Resource for Agent Training: Texas Medicaid Eligibility and Long-Term Care Partnership" prepared by HHSC that provides guidance on related Medicaid eligibility issues. The information and resource material provided on this website will be maintained and updated by DADS, as necessary.

The majority of the requirements of the NAIC Model Act pertaining to long-term care insurance have been incorporated into the adopted sections with only a few necessary modifications. First, the Model Act addresses training requirements related to the sale, solicitation, or negotiation of long-term care insurance, and where applicable, long-term care partnership insurance. However, the adopted sections apply only to long-term care partnership insurance training requirements. This change is necessary to implement the requirements of SB 22 and the DRA, which specifically relate to long-term care partnership insurance. Second, the adopted sections do not address the use of insurer or company specific products, including marketing or sales information and materials, during training courses because §19.1008 of this title (relating to Certified Course Advertising, Modification, and Assignment), which is not amended under this adoption order, currently contains the Department's prohibitions regarding the use of company logos, references to specific company products, and the presentation of advertising materials during course instruction and examination periods. Therefore, it is not necessary to adopt the provision of the NAIC Model Act addressing the same subject matter for long-term care partnership insurance. Rather, the adopted sections apply the provisions of §19.1008 to long-term care partnership insurance and training

requirements, as necessary. Third, the adopted sections slightly deviate from the provisions of the NAIC Model Act with regard to records maintenance and verification requirements. Instead of requiring insurers to maintain verification that a licensee has successfully completed a long-term care partnership certification or continuing education course, the adopted sections require a licensee and a course provider to maintain records verifying that a licensee completed a Department approved long-term care partnership certification or continuing education course. This requirement serves two purposes. First, to the extent possible, the adopted sections incorporate the requirements for long-term care partnership certification and continuing education courses and related long-term care partnership licensee requirements into the existing framework for provider registration, instructor, and speaker criteria; course criteria; course certification; submission applications, course expirations, and resubmissions; types of courses; requirements for successful completion of continuing education courses; and forms and fees. Because existing Department regulations require licensees and providers to maintain course completion records, it is not necessary for the Department to adopt the provisions of the NAIC Model Act addressing those regulatory areas. Additionally, the Department is separately proposing amendments (July 18, 2008 edition, of the *Texas Register*) that specify additional agent training verification and insurer certification requirements for long-term care partnership plans. These amendments amend Chapter 3, Subchapter Y of this title (relating to Standards for Long-term Care Insurance Coverage Under Individual and Group Policies). As a result, it is unnecessary for the Department to adopt the provisions of the NAIC Model Act addressing verification and maintenance requirements in these adopted amendments and new sections because those requirements will be addressed separately in the amendments to Chapter 3, Subchapter Y of this title. Fourth, the NAIC Model Act provides that an individual already licensed and selling, soliciting, or negotiating long-term care insurance on the effective date of the enacting legislation may not continue to sell, solicit, or negotiate long-term care insurance unless the individual has completed a one-time training course within one year from the effective date of the enacting legislation. The adopted sections differ from this NAIC Model Act provision in two ways. First, the adopted sections permit individuals already licensed and performing the acts of an agent with regard to a long-term care insurance policy on the effective date of adopted §19.1022 (relating to Long-Term Care Partnership Certification Course) to perform the acts of an agent with regard to a long-term care partnership insurance policy on the effective date of adopted §19.1022, provided that the individual completes a long-term care partnership certification course meeting the requirements of the subchapter no later than January 1, 2009. This modification is necessary for consistency with the other provisions of the adopted sections that relate to long-term care partnership insurance. Second, the adopted sections shorten by approximately 60 days the NAIC allotted time period in which an appropriately licensed individual may sell, solicit, or negotiate long-term care insurance prior to completing a one-time long-term care insurance training course. This modification is necessary to implement the long-term care partnership insurance certification requirements of SB 22. SB 22 requires each long-term care benefit plan issuer that offers a plan under the partnership for long-term care program to certify to the Commissioner that each individual who sells a plan on behalf of the issuer completes training and demonstrates evidence of an understanding of these plans and how these plans relate to other public and private coverage of long-term care. This provision of

SB 22 will be implemented in the Department's separately proposed rules (July 18, 2008 edition, of the *Texas Register*) relating to standards for long-term care insurance coverage under individual and group policies. Those rules propose that the SB 22 certifications be submitted periodically to the Commissioner beginning in January 2009. If the Department adopted the provision of the NAIC Model Act without modification of the allotted time period, individuals already licensed and selling, soliciting, or negotiating long-term care insurance on March 1, 2008, could not sell, solicit, or negotiate long-term care partnership insurance unless the individual completed a one-time training course within one year from March 1, 2008, which could be approximately 60 days after the first certifications would be due to the Commissioner under the separately proposed Department rules. In those cases, the certifications submitted to the Commissioner would not meet the requirements of SB 22 or Department regulation. This is because not all individuals selling, soliciting, or negotiating long-term care partnership insurance on behalf of long-term care benefit plan issuers would have completed the required training by the time the first certifications were due. By providing the January 1, 2009 deadline in the adopted sections in lieu of the allotted deadline in the NAIC Model Act, long-term care benefit plan issuers will be able to certify to the Commissioner, in January 2009, that all individuals performing the acts of an agent with regard to a long-term care partnership insurance policy on their behalf have completed the required training. Lastly, while the adopted sections address the three agent activities enumerated in the NAIC Model Act, the substantive requirements of adopted new §19.1022 and §19.1023 are based on the Insurance Code §4001.051 (relating to acts constituting acting as an agent), which specifies agent activities that are in addition to those enumerated in the NAIC Model Act. This modification is necessary to accurately incorporate activities under Texas law that an individual may take with regard to a long-term care partnership insurance policy that may qualify as the act of an agent and, therefore, subject the individual to Department regulation. Aside from these necessary modifications of the NAIC Model Act provisions, the remaining requirements of the NAIC Model Act are incorporated into the adopted sections without substantial change.

In general, and to the extent possible, the adopted amendments to §§19.1005, 19.1006, 19.1007, 19.1009, 19.1011, and 19.1012 are necessary to incorporate the requirements related to long-term care partnership certification and continuing education courses and related long-term care partnership licensee training into existing Department regulations relating to provider registration, instructor, and speaker criteria; course criteria; course certification; submission applications, course expirations, and resubmissions; types of courses; requirements for successful completion of continuing education courses; and forms and fees. For example, the adopted amendment to §19.1005(a) authorizes a provider applicant to seek initial registration or renewal registration from the Department to be a long-term care partnership certification course provider in the same manner that a provider applicant must seek initial registration or renewal registration from the Department to be a continuing education provider or an adjuster prelicensing education provider. Further, the adopted amendment to §19.1005(b) provides necessary consistency with the adopted amendment to §19.1005(a) by authorizing providers to certify and offer long-term care partnership certification courses in the same manner as, and in addition to, continuing education courses and adjuster prelicensing education courses. Lastly, the adopted amendment to §19.1005(f) provides necessary consistency with

the adopted amendment to §19.1005(a) by prohibiting providers from using speakers in conjunction with long-term care partnership certification courses, unless the speaker qualifies as an instructor. Providers using speakers in conjunction with adjuster prelicensing courses and other continuing education courses that are not one-time event continuing education courses are subject to the same prohibition. The adopted amendment to §19.1006 that adds subsection (c) is necessary to apply the existing requirements of Subchapter K equally to courses certified for continuing education and long-term care partnership certification and long-term care partnership continuing education purposes, unless specifically stated otherwise. Subchapter K regulates agent and adjuster continuing education and adjuster prelicensing education programs. Adopted §19.1006(c) makes clear that, unless specifically stated otherwise, each provision of Subchapter K applies equally to courses certified for continuing education and long-term care partnership certification and long-term care partnership continuing education purposes. The "unless specifically stated otherwise" provision of adopted §19.1006(c) is necessary to provide the regulatory framework for long-term care partnership certification and long-term care partnership continuing education course requirements by incorporating such requirements into the existing regulatory framework of Subchapter K. Subchapter K currently provides such requirements for other Department licensees, including provider registration requirements, instructor, and speaker criteria requirements; course criteria requirements; course certification; submission applications, course expirations, and resubmissions requirements; types of courses; requirements for successful completion of continuing education courses; and forms and fees. The "unless specifically stated otherwise" provision is adopted in lieu of amending all of the applicable sections of Subchapter K to include specific references to long-term care partnership certification and continuing education course requirements. Therefore, under the adopted sections, unless specifically stated otherwise, the provisions of Subchapter K that apply to courses certified for continuing education purposes, including the adopted amendments as well as the provisions of Subchapter K that are not amended under this adoption order, also apply to courses certified for long-term care partnership certification and long-term care partnership continuing education purposes. Further, the adopted amendment to §19.1007(a) requires providers to submit long-term care partnership certification course applications to the Department in the same manner as providers are required to submit course certification applications for Department licensee continuing education courses and adjuster prelicensing training and education courses. This is necessary to provide consistency among course certification applications submitted by providers. Adopted §19.1009(c) is also consistent with and similar to the requirements related to Department licensee continuing education and adjuster prelicensing courses under §19.1009 with regard to complete course of study requirements and options for classroom, classroom equivalent, and self-study instruction. Adopted §19.1009(c) requires a provider to offer a long-term care partnership certification course as a complete course of study that meets the requirements of adopted §19.1022. Adopted §19.1022 prescribes the requirements for a long-term care partnership certification course, including course length and course content. Adopted §19.1009(c) and §19.1022 collectively require a provider to offer a long-term care partnership certification course only as a one-time, eight-hour unit. While a long-term care partnership certification course may be longer than eight hours in length, it may only be offered as a one-time

course. Thus, under these adopted provisions, a provider could not offer or combine several, separate long-term care partnership certification courses in order to satisfy the one-time, eight-hour certification course requirement. The requirement that a long-term care partnership certification course must be provided to licensees in one sitting and as a one-time course is necessary to ensure consistency among provider materials and course content and to provide the best opportunity for meaningful feedback and interaction between licensees and course instructors. Piecemeal completion of a long-term care partnership certification course could potentially result in confusing or inconsistent course instruction, confusing or inconsistent teaching materials, and ineffective or inefficient participation by licensees. Additionally, adopted §19.1009(c) authorizes a provider to offer long-term care partnership certification courses as classroom, classroom equivalent, or self-study instruction. This option allows a licensee optimum scheduling flexibility because a licensee may choose the most convenient time and method for completing the course based on his or her personal schedule and preferences. The adopted amendment to §19.1011(a) requires providers to use actual attendance rosters to certify completion of a certified classroom long-term care partnership certification course. Additionally, the adopted amendment to §19.1011(a) authorizes providers to establish assessment measurements or additional completion requirements for successful completion of a classroom long-term care partnership certification course, provided that the requirements are fully disclosed in the registration materials before a licensee purchases the course. These requirements are consistent with the existing requirements related to completion certification for Department licensee classroom or one-time-event continuing education courses. The adopted amendment to §19.1011(b) requires providers to use periodic interactive inquiries to determine completion of a certified classroom equivalent long-term care partnership certification course. The adopted provisions also require licensees to complete all inquiry sections with a minimum score of at least 70 percent for each section. These requirements are consistent with the existing requirements related to completion certification for classroom equivalent continuing education courses. Lastly, the adopted amendment to §19.1011(c) requires providers to use a written, online, or computer-based final examination as the means of completion for all certified self-study long-term care partnership certification courses. Adopted §19.1011(c) also includes requirements relating to the content of course records for long-term care partnership certification self study examinations. These requirements are consistent with the existing requirements related to the content of course records for continuing education self-study examinations. Further, the adopted amendments to §19.1012 prescribe the same fees for administering the long-term care partnership certification program that are required for continuing education course certification. As provided under existing §19.1012(b), these fees are nonrefundable and apply unless the Department contracts with a third party to provide continuing education services. Finally, the adopted amendment to §19.1014(a) requires providers to maintain long-term care partnership certification records in the same manner and for the same length of time as continuing education and adjuster prelicensing education records. If long-term care partnership certification records are audited or reviewed and the validity or completeness of the records are questioned, the adopted amendment to §19.1014(e) grants providers 30 days from the date of notice to correct any discrepancies or to submit new documentation. The adopted amendment to §19.1014(e) also

grants the same amount of time to providers with regard to adjuster precertification records. These adopted amendments are necessary to provide consistency with the existing provider compliance records provisions related to Department licensee continuing education records. Applying the existing regulations for continuing education courses and adjuster precertification education and instruction to long-term care partnership certification and continuing education courses and related long-term care partnership licensee training requirements where possible promotes stability and consistency in Department regulation, reduces additional costs and unnecessary use of resources, and encourages uniform treatment among continuing education and long-term care partnership certification course and licensee training requirements

Adopted new §19.1022 and §19.1023 are necessary to address new requirements that are unique to long-term care partnership certification and continuing education courses and related long-term care partnership licensee training requirements that are required under SB 22 and the DRA. Adopted new §19.1022 prescribes the requirements for long-term care partnership certification courses and related long-term care partnership licensee training requirements. First, adopted §19.1022(a) prohibits an individual from performing any action constituting the act of an agent under the Insurance Code §4001.051 with regard to a long-term care partnership insurance policy unless the licensee holds a current Life, Accident, and Health license issued by the Department and has completed a Department certified long-term care partnership certification course meeting the requirements of the subchapter. Adopted §19.1022(b) provides that an individual that holds a current Life, Accident, and Health license issued by the Department and is performing any action constituting the act of an agent pursuant to the Insurance Code §4001.051 with regard to a long-term care insurance policy at the time of the effective date of adopted §19.1022 may perform any action constituting the act of an agent pursuant to the Insurance Code §4001.051 with regard to a long-term care partnership insurance policy on the effective date of adopted §19.1022, provided that the individual completes a long-term care partnership certification course meeting the requirements of the subchapter no later than January 1, 2009. Adopted §19.1022(c) establishes the standards for a Department certified long-term care partnership certification course. Adopted §19.1022(d) permits a licensee to count a long-term care partnership certification course toward completion of the continuing education requirements prescribed in §19.1003 of Subchapter K (relating to Licensee Requirements). Additionally, §19.1022(d) requires a licensee choosing to use a long-term care partnership certification course to satisfy a portion of the continuing education requirements prescribed in §19.1003 to comply with §19.1013 of Subchapter K (relating to Licensee Record Maintenance). Adopted §19.1022(e) requires a licensee to maintain proof of completion of a long-term care partnership certification course for a period of four years from the date of completion of the course. Additionally, §19.1022(e) requires a licensee to provide proof of completion of a long-term care partnership certification course to the Department upon request. Adopted §19.1022(f) sets forth the requirements for a provider issued completion certificate for a long-term care partnership certification course. Adopted §19.1022(g) describes the course subjects that a long-term care partnership certification course outline must address. Adopted §19.1022(h) makes clear that providers must meet all of the requirements of Subchapter K before offering a long-term care partnership certification course to licensees. Adopted §19.1022(i) and §19.1022(j) are

necessary to address reciprocity among the states with regard to long-term care partnership training requirements. Adopted §19.1022(i) specifies the conditions under which a non-resident licensee is not required to complete a long-term care partnership certification course required by the subchapter. Adopted §19.1022(j) specifies the conditions under which a non-resident licensee whose home state does not qualify as a long-term care insurance partnership state may comply with the requirements of adopted §19.1022. Adopted §19.1022(j) requires a non-resident licensee in such a situation to either complete a Department certified long-term care partnership certification course in this state that meets the requirements of the subchapter or designate a home state that qualifies as a long-term care partnership insurance state and meet the requirements of adopted §19.1022(i). Adopted §19.1022(k) is necessary to clarify that licensees that may be exempt from continuing education requirements provided under §19.1004 of Subchapter K (relating to Licensee Exemption from and Extension of Time for Continuing Education) are not exempt from the long-term care partnership certification course and related licensee training requirements of adopted §19.1022. This is necessary because neither SB 22 nor the DRA exempts any individuals from the long-term care partnership training requirements. The Department's adopted sections have the same framework as the NAIC Model Act, which requires individuals to complete a one-time, eight-hour long-term care partnership certification course. The NAIC Model Act also does not exempt any individuals from this requirement. Because neither the DRA, SB 22, nor the NAIC Model Act provide any individuals any exemptions from the long-term care partnership training requirements, individuals intending to perform any action constituting the act of an agent pursuant to the Insurance Code §4001.051 with regard to a long-term care partnership insurance policy must complete the long-term care partnership certification course required under adopted §19.1022, regardless of their exemption status under §19.1004. Lastly, adopted §19.1022(l) provides a website address maintained by the Texas Department of Aging and Disability Services (DADS), where providers and licensees may obtain additional information and resource material regarding the long-term care partnership program. Adopted §19.1023 is necessary to specify ongoing long-term care partnership licensee training requirements, which must be in the form of continuing education. Adopted §19.1023(a) specifies how often a licensee must complete the required long-term care partnership continuing education requirements and how many hours of long-term care partnership continuing education a licensee must complete. Adopted §19.1023(b) requires the continuing education hours required under adopted §19.1023(a) to comply with the course criteria in §19.1006 of Subchapter K (relating to Course Criteria) and to enhance the knowledge, understanding, and professional competence of the student with regard to subjects described in adopted §19.1022. Adopted §19.1023(c) makes clear that providers must meet all of the requirements of Subchapter K before offering a long-term care partnership continuing education course to licensees. Adopted §19.1023(d) specifies the conditions under which a non-resident licensee is not required to complete long-term care partnership continuing education as required by the subchapter. Adopted §19.1023(e) provides the conditions under which a non-resident licensee may comply with the requirements of the subchapter if his or her home state does not qualify as a long-term care insurance partnership state. Lastly, adopted §19.1023(f) is necessary to clarify that licensees that may be exempt from continuing education requirements provided under §19.1004 are not exempt from

the ongoing training requirements of adopted §19.1023, which the Department is requiring in the form of continuing education. As explained previously, neither SB 22 nor the DRA exempts any individuals from the long-term care partnership training requirements, including the ongoing training requirements. The Department's adopted sections follow the framework of the NAIC Model Act that requires licensees to complete no less than four hours of long-term care partnership ongoing training. The NAIC Model Act also does not exempt any individuals from the long-term care partnership ongoing training requirements. Because neither the DRA, SB 22, nor the NAIC Model Act provide any individuals any exemptions from the long-term care partnership training requirements, individuals intending to perform any action constituting the act of an agent pursuant to the Insurance Code §4001.051 with regard to a long-term care partnership insurance policy must complete long-term care partnership continuing education under adopted §19.1023, regardless of their exemption status under §19.1004.

Finally, the adopted amendments to §19.1001(d) and §19.1002(b) are necessary to delete obsolete provisions relating to provider compliance dates and to amend the existing definitions of certain terms used in the subchapter. First, the adopted amendment to §19.1001(d), relating to provider compliance date, deletes the subsection in its entirety because the subsection is obsolete and no longer functions as it was originally intended. Section 19.1001(d) was originally adopted to be effective January 6, 2003, and Subchapter K was later amended to be effective January 19, 2006. Therefore, the calculation of the date of compliance as provided in §19.1001(d) is no longer applicable. Second, the adopted amendments to §19.1002(b) add a new definition of long-term care partnership insurance policy. SB 22 requires each individual who sells a long-term care benefit plan under the partnership for long-term care program to complete training and demonstrate evidence of an understanding of these plans and how the plans relate to other public and private coverage of long-term care. SB 22 requires each individual who sells a long-term care benefit plan under the partnership for long-term care program to complete training and demonstrate evidence of an understanding of these plans and how the plans relate to other public and private coverage of long-term care. The new definition in adopted §19.1002(b)(17) is necessary because adopted §19.1022 and §19.1023, which implement SB 22 by prescribing requirements for long-term care partnership certification and continuing education courses and related long-term care partnership licensee training, include references to long-term care partnership insurance policies. Other terms in §19.1002(b) are amended to provide for long-term care partnership certification and continuing education courses and related long-term care partnership licensee training.

HOW THE SECTIONS WILL FUNCTION. The following is a section-by-section overview of the adopted sections.

Subchapter Title. The adopted subchapter title more accurately reflects the subchapter's additional content, which includes requirements related to long-term care partnership certification and continuing education courses and related long-term care partnership licensee training requirements.

§19.1001. General Provisions. The adopted amendment to §19.1001(a) identifies an additional purpose of the subchapter, which is to specify procedures and requirements for certification and approval of long-term care partnership certification courses and licensee long-term care partnership training requirements, as authorized under the Insurance Code Chapter 1651, Sub-

chapter C, and the Human Resources Code Chapter 32, Subchapter C.

The adopted amendment to §19.1001(d), relating to provider compliance date, deletes the subsection in its entirety because the subsection is obsolete and no longer functions as it was originally intended.

§19.1002. Definitions. The adopted amendments to §19.1002(b) add a new definition of long-term care partnership insurance policy. The adopted amendments to §19.1002(b) also amend the definition of provider to require registration with the Department in order to offer long-term care partnership certification courses. The adopted amendments to §19.1002(b) also amend the definition of provider registration to authorize utilization of the Department's process for providers seeking permission to offer long-term care partnership certification courses to licensees.

§19.1005. Provider Registration, Instructor, and Speaker Criteria. The adopted amendment to §19.1005(a) authorizes a provider applicant to seek initial registration or renewal registration from the Department to be a long-term care partnership certification course provider in the same manner that a provider applicant must seek initial registration or renewal registration from the Department to be a continuing education provider or an adjuster preclicensing education provider. The adopted amendment to §19.1005(b) provides necessary consistency with the adopted amendment to §19.1005(a) by authorizing providers to certify and offer long-term care partnership certification courses in the same manner as, and in addition to, continuing education courses and adjuster preclicensing education courses. Lastly, the adopted amendment to §19.1005(f) provides necessary consistency with the adopted amendment to §19.1005(a) by prohibiting providers from using speakers in conjunction with long-term care partnership certification courses, unless the speaker qualifies as an instructor.

§19.1006. Course Criteria. Adopted §19.1006(c) prescribes the general course criteria for a Department certified long-term care partnership certification course. Specifically, adopted §19.1006(c) requires that the course content of a Department certified long-term care partnership certification course enhance the student's knowledge, understanding, and professional competence regarding the subjects specified in adopted §19.1022 (relating to Long-Term Care Partnership Certification Course). Adopted §19.1006(c) also makes clear that, unless specifically stated otherwise, each provision of Subchapter K applies equally to courses certified for continuing education and long-term care partnership certification and long-term care partnership continuing education purposes.

§19.1007. Course Certification Submission Applications, Course Expirations, and Resubmissions. The adopted amendment to §19.1007(a) requires providers to submit long-term care partnership certification course applications to the Department in the same manner as providers are required to submit course certification applications for Department licensee continuing education courses and adjuster preclicensing training and education courses. Specifically, the adopted amendment to §19.1007(a)(7) requires a provider to include a statement identifying that a course is for long-term care partnership certification, along with the TDI license number and the name of the student completing the course, in the sample certificate of completion that is submitted to the Department as part of a course certification application. The adopted amendment to §19.1007(a)(8) also requires a provider to include a statement in

the submitted course certification application that the course is intended for long-term care partnership certification and whether the course is primarily intended to be open to all licensees or has a restricted enrollment.

§19.1009. Types of Courses. Adopted §19.1009(c) requires a provider to offer a long-term care partnership certification course as a complete course of study that meets the requirements of adopted §19.1022. Adopted §19.1022 prescribes the requirements for a long-term care partnership certification course, including course length and course content. Adopted §19.1009(c) and §19.1022 require a provider to offer a long-term care partnership certification course only as a one-time, eight-hour unit. Additionally, adopted §19.1009(c) authorizes a provider to offer long-term care partnership certification courses as classroom, classroom equivalent, or self-study instruction.

§19.1011. Requirements for Successful Completion of Continuing Education Courses. The adopted amendment to §19.1011(a) requires providers to use actual attendance rosters to certify completion of a certified classroom long-term care partnership certification course. Additionally, the adopted amendment to §19.1011(a) authorizes providers to establish assessment measurements or additional completion requirements for successful completion of a classroom long-term care partnership certification course, provided that the requirements are fully disclosed in the registration materials before a licensee purchases the course. The adopted amendment to §19.1011(b) requires providers to use periodic interactive inquiries to determine completion of a certified classroom equivalent long-term care partnership certification course. The adopted provisions also require licensees to complete all inquiry sections with a minimum score of at least 70 percent for each section. The adopted amendment to §19.1011(c) requires providers to use a written, online, or computer-based final examination as the means of completion for all certified self-study long-term care partnership certification courses.

§19.1012. Forms and Fees. The adopted amendments to §19.1012 prescribe the same fees for administering the long-term care partnership certification program that are required for continuing education course certification. As provided under existing §19.1012(b), these fees are nonrefundable and apply unless the Department contracts with a third party to provide continuing education services. The adopted fee amounts are: provider original registration \$50 and provider renewal \$50; continuing education course certification initial submission \$10 for each hour of course credit requested on the application; resubmission, \$10 for each hour of course credit requested on the application; and course assignment, \$50 per assignment.

§19.1014. Provider Compliance Records. The adopted amendment to §19.1014(a) requires providers to maintain long-term care partnership certification records in the same manner and for the same length of time as continuing education and adjuster precertification records. If long-term care partnership certification records are audited or reviewed and the validity or completeness of the records are questioned, the adopted amendment to §19.1014(e) grants providers 30 days from the date of notice to correct any discrepancies or to submit new documentation. The adopted amendment to §19.1014(e) also grants the same amount of time to providers with regard to adjuster precertification records.

§19.1022. Long-Term Care Partnership Certification Course. Adopted new §19.1022 prescribes the requirements for long-term care partnership certification courses and related

long-term care partnership licensee training requirements. First, adopted §19.1022(a) prohibits an individual from performing any action constituting the act of an agent under the Insurance Code §4001.051 with regard to a long-term care partnership insurance policy unless the licensee holds a current Life, Accident, and Health license issued by the Department and has completed a Department certified long-term care partnership certification course meeting the requirements of the subchapter. Adopted §19.1022(b) provides that an individual that holds a current Life, Accident, and Health license issued by the Department and is performing any action constituting the act of an agent pursuant to the Insurance Code §4001.051 with regard to a long-term care insurance policy at the time of the effective date of adopted §19.1022 may perform any action constituting the act of an agent pursuant to the Insurance Code §4001.051 with regard to a long-term care partnership insurance policy on the effective date of adopted §19.1022, provided that the individual completes a long-term care partnership certification course meeting the requirements of the subchapter no later than January 1, 2009. Adopted §19.1022(c) establishes the standards for a Department certified long-term care partnership certification course. Under this subsection, a Department certified long-term care partnership certification course must be at least eight hours in length, must cover the subjects specifically described in adopted §19.1022(g), and must be submitted to the Department for approval in compliance with the requirements of §19.1007 of Subchapter K (relating to Course Certification Submission Applications, Course Expirations, and Resubmissions). Adopted §19.1022(d) permits a licensee to count a long-term care partnership certification course toward completion of the continuing education requirements prescribed in §19.1003 of Subchapter K (relating to Licensee Requirements). Additionally, §19.1022(d) requires a licensee choosing to use a long-term care partnership certification course to satisfy a portion of the continuing education requirements prescribed in §19.1003 to comply with §19.1013 of Subchapter K (relating to Licensee Record Maintenance). Adopted §19.1022(e) requires a licensee to maintain proof of completion of a long-term care partnership certification course for a period of four years from the date of completion of the course. Additionally, §19.1022(e) requires a licensee to provide proof of completion of a long-term care partnership certification course to the Department upon request. Adopted §19.1022(f) sets forth the requirements for a provider issued completion certificate for a long-term care partnership certification course. Specifically, §19.1022(f) requires a provider issued completion certificate for a long-term care partnership certification course to meet the requirements of §19.1011 of Subchapter K (relating to Requirements for Successful Completion of Continuing Education Courses). Adopted §19.1022(g) describes the course subjects that a long-term care partnership certification course outline must address, including (i) long-term care insurance; (ii) long-term care services and providers; (iii) qualified state long-term care insurance partnership programs, which must include state and federal requirements; the relationship between qualified state long-term care insurance partnership programs and other public and private coverage of long-term care services, including Medicaid; available long-term care services and providers and changes or improvements in long-term care services or providers; (iv) alternatives to the purchase of private long-term care insurance; (v) the effect of inflation on benefits and the importance of inflation protection; (vi) consumer suitability standards and guidelines; (vii) Medicaid eligibility criteria and requirements, including financial eligibility criteria and requirements; and (viii) asset disregard

under qualified state long-term care partnership programs, including the interaction between asset disregard and Medicaid rules. Adopted §19.1022(h) makes clear that providers must meet all of the requirements of Subchapter K before offering a long-term care partnership certification course to licensees. Adopted §19.1022(i) and §19.1022(j) address reciprocity among the states with regard to long-term care partnership training requirements. Adopted §19.1022(i) specifies the conditions under which a non-resident licensee is not required to complete a long-term care partnership certification course required by the subchapter. Specifically, under the provisions of §19.1022(i), a non-resident licensee is not required to complete a long-term care partnership certification course required by the subchapter if the non-resident licensee holds a comparative, current license issued by his or her home state; the non-resident licensee's home state qualifies as a long-term care insurance partnership state; and upon Department request, both the insurer who appointed the non-resident licensee and the non-resident licensee are able to provide proof of the non-resident's completion of a long-term care partnership certification course in the non-resident licensee's home state with requirements substantially similar to those of adopted §19.1022. Adopted §19.1022(j) specifies the conditions under which a non-resident licensee whose home state does not qualify as a long-term care insurance partnership state may comply with the requirements of adopted §19.1022. Adopted §19.1022(j) requires a non-resident licensee in such a situation to either complete a Department certified long-term care partnership certification course in this state that meets the requirements of the subchapter or designate a home state that qualifies as a long-term care partnership insurance state and meet the requirements of adopted §19.1022(i). Adopted §19.1022(k) makes clear that licensees that may be exempt from continuing education requirements provided under §19.1004 of Subchapter K (relating to Licensee Exemption from and Extension of Time for Continuing Education) are not exempt from the long-term care partnership certification course and related licensee training requirements of adopted §19.1022. Lastly, adopted §19.1022(l) provides a website address maintained by the Texas Department of Aging and Disability Services (DADS), where providers and licensees may obtain additional information and resource material regarding the long-term care partnership program.

§19.1023. Long-Term Care Partnership Continuing Education. Adopted §19.1023 prescribes the requirements for ongoing long-term care partnership licensee training requirements, which must be in the form of continuing education. Adopted §19.1023(a) specifies how often a licensee must complete the required long-term care partnership continuing education requirements and how many hours of long-term care partnership continuing education a licensee must complete. Specifically, under §19.1023(a), in each reporting period following the reporting period in which a licensee completed a long-term care partnership certification course, a licensee must complete at least four hours of Department certified continuing education, during each reporting period, as part of the licensee's continuing education requirements prescribed in §19.1003. Adopted §19.1023(b) requires the continuing education hours required under adopted §19.1023(a) to comply with the course criteria in §19.1006 of Subchapter K (relating to Course Criteria) and to enhance the knowledge, understanding, and professional competence of the student with regard to subjects described in adopted §19.1022. Adopted §19.1023(c) makes clear that providers must meet all of the requirements of Subchapter K before offering a long-term care partnership continuing education course to licensees.

Adopted §19.1023(d) specifies the conditions under which a non-resident licensee is not required to complete long-term care partnership continuing education as required by the subchapter. Under the provisions of §19.1023(d), a non-resident licensee is not required to complete four hours of long-term care partnership continuing education if the non-resident licensee is in compliance with the long-term care partnership continuing education requirements of his or her home state and if his or her home state qualifies as a long-term care partnership insurance state. Adopted §19.1023(e) provides the conditions under which a non-resident licensee may comply with the requirements of the subchapter if his or her home state does not qualify as a long-term care insurance partnership state. Specifically, §19.1023(e) requires a non-resident licensee in such a situation to either complete four hours of Department certified long-term care partnership continuing education in this state that meets the requirements of the subchapter or designate a home state that qualifies as a long-term care partnership insurance state and meet the requirements of adopted §19.1023(d). Lastly, adopted §19.1023(f) makes clear that licensees that may be exempt from continuing education requirements provided under §19.1004 are not exempt from the ongoing training requirements of adopted §19.1023, which the Department is requiring in the form of continuing education.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The Department did not receive any comments on the proposed amendments and new sections.

STATUTORY AUTHORITY. The amendments and new sections are adopted under the Insurance Code §§1651.104, 1651.105, 1651.107, and 36.001 and the Human Resources Code §32.105. The Insurance Code §1651.104 provides that the Commissioner, in consultation with the Texas Health and Human Services Commission (HHSC), shall adopt minimum standards for a long-term care benefit plan that may qualify as an approved plan under the partnership for long-term care program. The standards must be consistent with provisions governing the expansion of a state long-term care partnership program established under the federal Deficit Reduction Act of 2005 (DRA) (Pub. L. No. 109-171). Section 6021(a)(1)(A)(iii)(V) of the DRA requires the state Medicaid agency under section 1902(a)(5) to provide information and technical assistance to the state insurance department on the insurance department's role of assuring that any individual who sells a long-term care insurance policy under the partnership receives training and demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care. The Insurance Code §1651.105 requires that each individual who sells a long-term care benefit plan under the partnership for long-term care program complete training and demonstrate evidence of an understanding of these plans and how the plans relate to other public and private coverage of long-term care. Section 1651.107 provides that the Commissioner may adopt rules as necessary to implement the subchapter. The Human Resources Code §32.105 requires the HHSC to provide information and technical assistance to the Texas Department of Insurance regarding that Department's role in ensuring that each individual who sells a long-term care benefit plan under the partnership for long-term care program receives training and demonstrates evidence of an understanding of these plans as required by the Insurance Code §1651.105. The training must satisfy the training requirements imposed under the provisions governing the expansion of a state long-term care partnership program established under the federal DRA. The Insurance Code §36.001 provides that the Commissioner

of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 16, 2008.

TRD-200803631

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

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For further information, please call: (512) 463-6327



TITLE 34. PUBLIC FINANCE

PART 9. TEXAS BOND REVIEW BOARD

CHAPTER 181. BOND REVIEW BOARD

SUBCHAPTER A. BOND REVIEW RULES

34 TAC §181.2, §181.9

The Texas Bond Review Board (BRB) adopts amendments to §181.2 and §181.9 concerning Bond Review Rules without changes to the proposed text as published in the April 25, 2008, issue of the *Texas Register* (33 TexReg 3382).

Texas Government Code Chapter 1231 was amended by the Texas Legislature 80th Regular Session, Senate Bill 1332 effective September 1, 2007. The amendments to the rules are to address the changes in Texas Government Code Chapter 1231 and to clarify existing Bond Review Board processes.

The 30-day comment period ended May 25, 2008, and BRB did not receive any comments on the proposed amendments.

No public comments were received. No public hearing was requested under Texas Government Code §2001.029.

The amendments are adopted under Texas Government Code §1231.022, which gives BRB the authority to adopt rules governing application for review, the review process, and reporting requirements involved in the issuance of state securities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 17, 2008.

TRD-200803658

Thomas Griess

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Texas Bond Review Board

Effective date: August 6, 2008

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For further information, please call: (512) 463-1741



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 1. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER U. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM POLICIES

37 TAC §1.261

The Texas Department of Public Safety adopts the repeal of §1.261, concerning Historically Underutilized Business Program Policies, without changes to the proposed text as published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3896).

Adoption of the repeal is necessary due to substantial changes being made. Adoption of the repeal is filed simultaneously with the adoption of a new §1.261 which will promulgate the department's rules regarding Historically Underutilized Businesses.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §2161.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 21, 2008.

TRD-200803710

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Effective date: August 10, 2008

Proposal publication date: May 16, 2008

For further information, please call: (512) 424-2135



37 TAC §1.261

The Texas Department of Public Safety adopts new §1.261, concerning the Historically Underutilized Business (HUB) Program, without changes to the proposed text as published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3897).

Adoption of new §1.261 is necessary in order to promulgate rules to comply with Texas Government Code, §2161.003, which requires the department to adopt the Comptroller's HUB Program rules as our own. The new section is being filed simultaneously with the adopted repeal of current §1.261.

No comments were received regarding adoption of the new section.

The new section is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §2161.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 21, 2008.

TRD-200803711

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135



CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER C. COMMERCIAL VEHICLE REGISTRATION AND INSPECTION ENFORCEMENT

37 TAC §4.37

The Texas Department of Public Safety adopts an amendment to §4.37, concerning Acceptance of Out-of-State Commercial Vehicle Inspection Certificate, without changes to the proposed text as published in the March 28, 2008, issue of the *Texas Register* (33 TexReg 2678).

Adoption of the amendment to §4.37 is necessary in order to remove the State of Arkansas from the list of jurisdictions certified by the Federal Motor Carrier Safety Administration as meeting the requirements of Title 49, Code of Federal Regulations, §396.23.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce the compulsory inspection of vehicles.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 21, 2008.

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Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135



CHAPTER 6. LICENSE TO CARRY HANDGUNS

SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §6.1, §6.2

The Texas Department of Public Safety adopts amendments to Chapter 6, §6.1 and §6.2, concerning General Provisions, without changes to the proposed text as published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3897).

Adoption of the amendments to §6.1 is necessary in order to delete redundant information which is already contained in the Act and to provide for clarification. Adoption of the amendments to §6.2 is necessary in order to update the rule to reflect current statutory requirements and practices.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Government Code, §411.197.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 21, 2008.

TRD-200803712

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135



37 TAC §§6.3 - 6.5

The Texas Department of Public Safety adopts the repeal of Chapter 6, §§6.3 - 6.5, concerning General Provisions, without changes to the proposed text as published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3899).

Adoption of repeal of the sections is necessary in order to delete redundant information which is already contained in the Act.

No comments were received regarding adoption of the repeals.

The repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Government Code, §411.197.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

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SUBCHAPTER B. ELIGIBILITY AND APPLICATION PROCEDURES

37 TAC §§6.11 - 6.21

The Texas Department of Public Safety adopts the repeal of Chapter 6, §§6.11 - 6.21, concerning Eligibility and Application Procedures, without changes to the proposed text as published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3899).

Adoption of repeal of the sections is necessary in order to delete redundant information already contained in the Act or because it does not reflect current practices. Adoption of the repeals is filed simultaneously with the adoption of new §§6.11 - 6.15 which will promulgate eligibility and application procedures.

No comments were received regarding adoption of the repeals.

The repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Government Code, §411.197.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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37 TAC §§6.11 - 6.15

The Texas Department of Public Safety adopts new Chapter 6, §§6.11 - 6.15, concerning Eligibility and Application Procedures, without changes to the proposed text as published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3900).

Adoption of the new sections is necessary in order to set forth eligibility and application procedures for licensing persons to carry concealed handguns. Adoption of the new sections is filed simultaneously with the adopted repeal of current §§6.11 - 6.21.

No comments were received regarding adoption of the new sections.

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Government Code, §411.197.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. PROCEDURES ON DENIAL OF LICENSE

37 TAC §§6.31, §6.32

The Texas Department of Public Safety adopts the repeal of Chapter 6, §6.31 and §6.32, concerning Procedures on Denial of License, without changes to the proposed text as published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3902).

Adoption of the repeal of §6.31 and §6.32 is necessary in order to delete redundant information which is already contained in the Act.

No comments were received regarding adoption of the repeals.

The repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Government Code, §411.197.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. ENFORCEMENT PROCEDURES

37 TAC §§6.51 - 6.54

The Texas Department of Public Safety adopts the repeal of Chapter 6, §§6.51 - 6.54, concerning Enforcement Procedures, without changes to the proposed text as published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3902).

Adoption of the repeal of §§6.51 - 6.54 is necessary in order to delete redundant information which is already contained in the Act.

No comments were received regarding adoption of the repeals.

The repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Government Code, §411.197.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. SUSPENSION AND REVOCATION PROCEDURES

37 TAC §§6.61 - 6.63

The Texas Department of Public Safety adopts the repeal of Chapter 6, §§6.61 - 6.63, concerning Suspension and Revocation Procedures, without changes to the proposed text as published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3903).

Adoption of the repeal of §§6.61 - 6.63 is necessary in order to delete redundant information which is already contained in the Act.

No comments were received regarding adoption of the repeals.

The repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Government Code, §411.197.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. CERTIFIED HANDGUN INSTRUCTORS

37 TAC §§6.71 - 6.74, 6.76, 6.77, 6.79 - 6.92

The Texas Department of Public Safety adopts amendments to Chapter 6, §§6.71 - 6.74, 6.76, 6.77, 6.79 - 6.81 and new §§6.82 - 6.92, concerning Certified Handgun Instructors, without changes to the proposed text as published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3904).

Adoption of the amendments to the sections is necessary in order to provide relevant information regarding current requirements. Adoption of the new sections is necessary in order to up-

date the rules to reflect current statutory requirements and practices.

No comments were received regarding adoption of the amendments and new sections.

The amendments and new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Government Code, §411.197.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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37 TAC §§6.82 - 6.96

The Texas Department of Public Safety adopts the repeal of Chapter 6, §§6.82 - 6.96, concerning Certified Handgun Instructors, without changes to the proposed text as published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3906).

Adoption of the repeal of §§6.82 - 6.96 is necessary in order to delete redundant information which is already contained in the Act or because it does not reflect current practices.

No comments were received regarding adoption of the repeals.

The repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Government Code, §411.197.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. INFORMATION AND REPORTS

37 TAC §§6.111 - 6.116

The Texas Department of Public Safety adopts the repeal of Chapter 6, §§6.111 - 6.116, concerning Information and Reports,

without changes to the proposed text as published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3907).

Adoption of the repeal of §§6.111 - 6.116 is necessary in order to delete redundant information which is already contained in the Act.

No comments were received regarding adoption of the repeals.

The repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Government Code, §411.197.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 9. PUBLIC SAFETY COMMUNICATIONS

SUBCHAPTER C. AMBER ALERT NETWORK FOR ABDUCTED CHILDREN

37 TAC §9.22

The Texas Department of Public Safety adopts amendments to §9.22, concerning the Amber Alert Network for Abducted Children, without changes to the proposed text as published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3908).

Adoption of amendments to the section is necessary in order to update the form number needed for requesting an Amber Alert. In addition, amendments to the graphic material contained in §9.22 are necessary in order to change the form number and to outline additional information requested from local law enforcement when they request activation of the statewide Amber Alert Network. The graphic material has been revised to include a date of request, a phone number for media inquiries, and a National Crime Information Center Identification Control number for the victim, as well as reorganizing some of the information gathered about the victim and suspect.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.353(b), which requires the director to adopt rules and issue directives as necessary to ensure proper implementation of the alert system with the rules and directive to include instructions on the procedures for activating and deactivating the alert system; and Texas Government Code, §411.353(c), which requires the director to prescribe forms for use by local law enforcement agencies in requesting activation of the alert system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. SILVER ALERT NETWORK

37 TAC §9.32

The Texas Department of Public Safety adopts amendments to §9.32, concerning the Silver Alert Network, without changes to the proposed text as published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3908).

Adoption of amendments to the section is necessary in order to update the form number needed for requesting a Silver Alert. In addition, amendments to the graphic material contained in §9.32 are necessary in order to outline additional information requested from local law enforcement when they request activation of the statewide Silver Alert Network. The graphic material has been revised to include an additional criterion for activation of the Silver Alert. This additional criterion confirms that local law enforcement have conducted an investigation verifying that the senior citizen's disappearance is due to his/her impaired mental condition, and that alternative reasons for the senior citizen's disappearance have been ruled out. The revised form also includes a date of request, a phone number for media inquiries, a National Crime Information Center Identification Control number, and the race of the senior citizen, as well as reorganizing some of the information gathered about the missing senior citizen.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.383(b), which requires the director to adopt rules and issue directives as necessary to ensure proper implementation of the alert system with the rules and directive to include procedures to be used by local law enforcement; a description of the circumstances under which local law enforcement is required to report a missing senior citizen; and the procedures to be used to notify designated media outlets in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§19.101, 19.403, 19.701, 19.2004, and new §19.706, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification. The amendments to §19.101 and §19.403 are adopted with changes to the proposed text published in the January 18, 2008, issue of the *Texas Register* (33 TexReg 509). The amendments to §§19.701, 19.2004, and new §19.706 are adopted without changes to the proposed text.

The amendment to §19.101 is changed to add the definitions for "Admission MDS assessment," "Completion date," "MDS," "MDS nurse reviewer," "RN assessment coordinator," "RUG," and "State Medicaid claims administrator," and to delete definitions for "Admission determination of medical necessity," "CARE form," "Case mix," "Facility nurse assessor," "Medical necessity assessment," "Minimum data set (MDS)," "Natural Death Act," "Nurse reviewer," "Preadmission medical necessity determination," "TDMHMR," "TILE," "TILE 202," "TILE error," and "Utilization review committee." The changes to §19.101 are made to ensure that the section is consistent with amendments proposed in the April 18, 2008, issue of the *Texas Register*.

The amendments to §§19.403, 19.701, and 19.2004 and new §19.706 are adopted to implement some provisions of Senate Bill (SB) 131, 80th Legislature, Regular Session, 2007, which amended the Texas Health and Safety Code, Chapter 242. Texas Health and Safety Code, §242.0445 requires a nursing facility to provide a representative of the facility's family council with a copy of the final statement of violations no later than the fifth working day after the facility receives the statement. Texas Health and Safety Code, §§242.901 - 242.906 allow family councils to exist in nursing facilities. The formation of a resident or family group or council, in a facility, was authorized in federal regulations prior to the passage of SB 131. Senate Bill 131, however, defines a family council and more specifically outlines a nursing facility's duties related to the formation, maintenance, and operation of a family council.

In §19.403(c), the word "and" was changed to "or" because the facility must take only one action or the other, depending on whether a family council exists.

DADS received written comments from the Texas Association of Residential Care Communities and nursing facility providers. A summary of the comments and the responses follow.

Comment: A commenter suggested deleting the language in §19.403(c)(2) requiring the facility to provide the resident's family representative with written information pertaining to the meeting time, date, location, and contact person for the family council.

Response: Texas Health and Safety Code, §242.903(c)(2), requires the facility to provide this information. The agency declines to make the suggested change.

Comment: A commenter suggested changing the time frame in §19.403(f) requiring a facility to provide the copies of records requested by a resident or the resident's legal representative from 2 workdays to 30 days because some corporations require copies of medical records to only be released by the corporate office.

Response: This requirement has been in the rule and was not changed in the amendments related to SB 131. This requirement is also a federal requirement at 42 Code of Federal Regulations (CFR) §483.10(b)(2)(ii). The agency has not made the suggested change.

Comment: A commenter requested the deletion of the language in §19.706(d)(1) and the insertion of the exact statutory language requiring the facility to consider the views and recommendations of the family council.

Response: The language previously in §19.701 regarding resident and family groups was based on a federal requirement at 42 CFR §483.15. Language from §19.701 was moved to the new §19.706 and language from SB 131 was incorporated into it. Federal guidance in the Centers for Medicare and Medicaid Services (CMS) State Operations Manual Appendix P interpretive guidelines for 42 CFR §483.15 indicates that acting upon grievances and recommendations does not mean the facility must accede to all recommendations. The agency has not made the suggested change.

Comment: Regarding §19.706(d)(1), a commenter stated that the incorrect version of the bill was used and that the proposed language was not taken from the final bill. The commenter requested inserting the language from Texas Health and Safety Code, §242.903(a), "consider the views and recommendations of the family council and make a reasonable effort to resolve the council's grievances."

Response: When adding language from the enrolled version of SB 131 into the rules, DADS worked with the current rule language regarding resident and family groups. Much of this language was based on the federal requirement at 42 CFR §483.15 and was moved from §19.701 to the new §19.706. The federal regulations require the facility to listen to the views and act upon grievances and recommendations. DADS combined the state and federal requirements in drafting §19.706(d)(1). Federal guidance in the CMS State Operations Manual Appendix P interpretive guidelines for 42 CFR §483.15(c) states that acting upon these issues does not mean that the facility must accede to all of the recommendations, but it must seriously consider them and attempt to accommodate the recommendations to the extent practicable. The agency has not made the suggested change.

Comment: A commenter suggested deleting §19.706(d)(2) relating to providing a family council with private space, stating that this language is already dealt with in §19.706(e)(1).

Response: The language in §19.706(d)(2) was moved from an existing rule at §19.701(3)(C) and is based on a federal requirement at 42 CFR §483.15(c). The language in §19.706(e)(1) is directly from Texas Health and Safety Code, §242.904(a), and refers to the facility's responsibility for allowing the family council, upon request, to meet in a common meeting room at least once a month during mutually agreed upon hours. The agency

believes both provisions are necessary and has not made the suggested change.

Comment: A commenter requested the deletion of §19.706(d)(3), which states that the facility must provide a designated staff person responsible for providing assistance and responding to written requests that result from resident group and family council meetings because this language is also listed in §19.706(e)(3), which states that the facility must designate a staff person to act as the family council's liaison to the facility.

Response: The language in §19.706(d)(3) was previously adopted from the federal requirement at 42 CFR §483.15(c)(5) referring to both resident groups and family councils. The language in §19.706(e)(3) is from Health and Safety Code §242.903(d)(4) and is similar to the federal requirement, but refers only to the family council. The agency believes that because of the different language and the reference to resident groups in the federal requirement, the separate language is necessary. The facility can designate the same staff person to meet both requirements. The agency has not made the suggested change.

Comment: A commenter requested the deletion of language in §19.706(e)(2) requiring the facility to provide bulletin board space to post notices and other information suggesting that potential postings may be outside the facility rules and regulations.

Response: The language in §19.706(e)(2) is based on Texas Health and Safety Code §242.903(d)(3). The agency has not made the suggested change.

Comment: A commenter requested that a facility's time in §19.706(e)(4) to respond to written requests from the family council be changed from five working days to 30 days to allow for the facility's corporate office to assist with any decisions.

Response: The rule is based on Texas Health and Safety Code, §242.903(d)(5), which requires the facility to respond in writing within five working days to a written request from a family council. The agency has not made the suggested change.

Comment: A commenter suggested deleting §19.706(e)(5) relating to the semiannual mailing, stating that facilities should not be required to spend additional monies for mailings when the family council will now have a bulletin board in the facility for their meeting postings.

Response: The rule is based upon Texas Health and Safety Code, §242.903(d)(1), which requires a mailing at least semi-annually. The agency has not made the suggested change.

Comment: A commenter suggested deleting language in §19.706(e)(5) because it is not in statute and stated that the issue in question is addressed in language in §19.403(c)(1)(2).

Response: The agency has not made the change. Section 19.403 states what the facility must do upon admission of a resident, and §19.706(e)(5) requires a semiannual mailing.

Comment: Two commenters suggested the deletion of §19.706(e)(6), which requires the facility to permit a representative of the family council to discuss concerns with an individual conducting an inspection or survey of the facility. The commenter stated that everyone has an opportunity to visit with surveyors and that a sign is posted when surveyors are in the building.

Response: The rule is based on Texas Health and Safety Code, §242.903(d)(2), which requires the facility to permit a family council representative to talk about concerns with an individual conducting an inspection or survey of the facility. The agency has not made the suggested change.

Comment: A commenter requested the additional requirement of notarization and presentation to the facility administration prior to allowing the observation and visitation of a resident as stated in §19.706(f). The commenter also stated that the permission should not include the viewing of any medical records.

Response: Section 19.706(f) states that unless the resident objects, a family council member may authorize, in writing, another member to visit and observe a resident represented by the authorizing member. This provision does not give the family council member any broadened authority other than visiting and observing the resident, and is subject to the resident's objection. This provision is based on Texas Health and Safety Code, §242.905, which does not require the written authorization to be notarized or to be presented to the administrator of the facility. The agency has not made the suggested change.

Comment: A commenter requested the deletion of §19.706(g)(1), which prohibits a facility from limiting the rights of a resident, a resident's family member, or a family council member to meet with an outside person, including an employee of the facility during the employee's nonworking hours if the employee agrees. The concern expressed is that the Health Insurance Portability and Accountability Act (HIPAA) might be violated or the HIPAA education and training undermined. Another concern expressed was the potential for an employee to show partiality to residents because of personal relationships.

Response: The rule is based on Texas Health and Safety Code, §242.903(b)(4). It is the responsibility of the facility to ensure that employees are informed about their responsibility regarding confidential information. This rule does not prevent the facility from having employment standards regarding partiality to certain residents. The agency has not made the suggested change.

Comment: A commenter requested the deletion of language in §19.706(h)(3)(A) which states that the facility must not willfully interfere with the formation, maintenance, or operation of a family council, including interfering by denying a family council the opportunity to accept help from an outside person. The commenter stated that this language is already in §19.706(g)(1) and (2).

Response: Texas Health and Safety Code, §242.903(b)(3), specifically prohibits a facility from "denying a family council the opportunity to accept help from an outside person." Texas Health and Safety Code, §242.903(b)(4), prohibits a facility from limiting "the rights of a resident, family member, or family council member to meet with an outside person. . . ." The first requirement refers to the family council receiving help from an outside person and the second requirement applies to a resident, family member or family council member meeting with a person. The agency has not made the suggested change.

Comment: A commenter requested the deletion of §19.706(h)(3)(A) - (C) stating that facility events would not prohibit a family council from meeting and their meetings should not prohibit facility events for residents.

Response: The rule is based upon Texas Health and Safety Code, §242.903(b)(7)(B). The agency has not made the suggested change.

Comment: A commenter had concerns with §19.2004(d), which states that the facility must provide the family council with a copy of the final statement of violations no later than the fifth working day after the facility receives the statement from DADS. The commenter stated the time frame would create a hardship for the facility and that DADS provides 10 working days for the plan of correction to be written and at that time a copy of the survey is posted for public review.

Response: The rule is based on Texas Health and Safety Code, §242.0445(b-1), which requires the facility to provide the final statement of violations to a representative of the family council within five working days after the facility receives the statement from DADS. The agency has not made the suggested change.

SUBCHAPTER B. DEFINITIONS

40 TAC §19.101

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §§242.901-242.906 and 242.0445, which govern the authority of family councils and the responsibility of nursing facilities related to family councils.

§19.101. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Abuse--Any act, failure to act, or incitement to act done willfully, knowingly, or recklessly through words or physical action which causes or could cause mental or physical injury or harm or death to a resident. This includes verbal, sexual, mental/psychological, or physical abuse, including corporal punishment, involuntary seclusion, or any other actions within this definition.

(A) "Involuntary seclusion"--Separation of a resident from others or from his room against the resident's will or the will of the resident's legal representative. Temporary monitored separation from other residents will not be considered involuntary seclusion and may be permitted if used as a therapeutic intervention as determined by professional staff and consistent with the resident's plan of care.

(B) "Mental/psychological abuse"--Mistreatment within the definition of "abuse" not resulting in physical harm, including, but not limited to, humiliation, harassment, threats of punishment, deprivation, or intimidation.

(C) "Physical abuse"--Physical action within the definition of "abuse," including, but not limited to, hitting, slapping, pinching, and kicking. It also includes controlling behavior through corporal punishment.

(D) "Sexual abuse"--Any touching or exposure of the anus, breast, or any part of the genitals of a resident without the voluntary, informed consent of the resident and with the intent to arouse or gratify the sexual desire of any person and includes but is not limited to sexual harassment, sexual coercion, or sexual assault.

(E) "Verbal abuse"--The use of any oral, written, or gestured language that includes disparaging or derogatory terms to a res-

ident or within the resident's hearing distance, regardless of the resident's age, ability to comprehend, or disability.

(2) Act--Chapter 242 of the Health and Safety Code.

(3) Activities assessment--See Comprehensive Assessment and Comprehensive Plan of Care.

(4) Activities director--The qualified individual appointed by the facility to direct the activities program as described in §19.702 of this title (relating to Activities).

(5) Addition--The addition of floor space to an institution.

(6) Administrator--Licensed nursing facility administrator.

(7) Admission MDS assessment--An MDS assessment that determines a recipient's initial determination of eligibility for medical necessity for admission into the Texas Medicaid Nursing Facility Program.

(8) Affiliate--With respect to a:

(A) partnership, each partner thereof;

(B) corporation, each officer, director, principal stockholder, and subsidiary; and each person with a disclosable interest;

(C) natural person, which includes each:

(i) person's spouse;

(ii) partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

(iii) corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(9) Agent--An adult to whom authority to make health care decisions is delegated under a durable power of attorney for health care.

(10) Applicant--A person or governmental unit, as those terms are defined in the Health and Safety Code, Chapter 242, applying for a license under that chapter.

(11) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.

(12) Attending physician--A physician, currently licensed by the Texas Medical Board, who is designated by the resident or responsible party as having primary responsibility for the treatment and care of the resident.

(13) Authorized electronic monitoring--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(14) Barrier precautions--Precautions including the use of gloves, masks, gowns, resuscitation equipment, eye protectors, aprons, facemasks, and protective clothing for purposes of infection control.

(15) Care and treatment--Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning and reasonable safety, all consistent with the preferences of the resident.

(16) Certification--The determination by DADS that a nursing facility meets all the requirements of the Medicaid and/or Medicare programs.

(17) CFR--Code of Federal Regulations.

(18) CMS--Centers for Medicare & Medicaid Services, formerly the Health Care Financing Administration (HCFA).

(19) Complaint--Any allegation received by DADS other than an incident reported by the facility. Such allegations include, but are not limited to, abuse, neglect, exploitation, or violation of state or federal standards.

(20) Completion date--The date an RN assessment coordinator signs an MDS assessment as complete.

(21) Comprehensive assessment--An interdisciplinary description of a resident's needs and capabilities including daily life functions and significant impairments of functional capacity, as described in §19.801(2) of this subchapter (relating to Resident Assessment).

(22) Comprehensive care plan--A plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet the resident's needs developed for each resident after admission. The plan addresses at least the following needs: medical, nursing, rehabilitative, psychosocial, dietary, activity, and resident's rights. The plan includes strategies developed by the team, as described in §19.802(b)(2) of this title (relating to Comprehensive Care Plans), consistent with the physician's prescribed plan of care, to assist the resident in eliminating, managing, or alleviating health or psychosocial problems identified through assessment. Planning includes:

(A) goal setting;

(B) establishing priorities for management of care;

(C) making decisions about specific measures to be used to resolve the resident's problems; and/or

(D) assisting in the development of appropriate coping mechanisms.

(23) Controlled substance--A drug, substance, or immediate precursor as defined in the Texas Controlled Substance Act, Texas Health and Safety Code, Chapter 481, and/or the Federal Controlled Substance Act of 1970, Public Law 91-513.

(24) Controlling person--A person with the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of a nursing facility or other person. A controlling person does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a nursing facility;

(B) any person who is a controlling person of a management company or other business entity that operates a nursing facility or that contracts with another person for the operation of a nursing facility; and

(C) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a nursing facility, is in a position of actual control or authority with respect to the nursing facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(25) Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and DADS have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(26) DADS--The Department of Aging and Disability Services.

(27) Dangerous drugs--Any drug as defined in the Texas Health and Safety Code, Chapter 483.

(28) Dentist--A practitioner licensed by the Texas State Board of Dental Examiners.

(29) Department--Department of Aging and Disability Services.

(30) DHS--Formerly, this term referred to the Texas Department of Human Services; it now refers to DADS, unless the context concerns an administrative hearing. Administrative hearings were formerly the responsibility of DHS; they now are the responsibility of the Texas Health and Human Services Commission (HHSC).

(31) Dietitian--A qualified dietitian is one who is qualified based upon either:

(A) registration by the Commission on Dietetic Registration of the American Dietetic Association; or

(B) licensure, or provisional licensure, by the Texas State Board of Examiners of Dietitians. These individuals must have one year of supervisory experience in dietetic service of a health care facility.

(32) Direct care by licensed nurses--Direct care consonant with the physician's planned regimen of total resident care includes:

(A) assessment of the resident's health care status;

(B) planning for the resident's care;

(C) assignment of duties to achieve the resident's care;

(D) nursing intervention; and

(E) evaluation and change of approaches as necessary.

(33) Distinct part--That portion of a facility certified to participate in the Medicaid Nursing Facility program.

(34) Drug (also referred to as medication)--Any of the following:

(A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(C) any substance (other than food) intended to affect the structure or any function of the body of man; and

(D) any substance intended for use as a component of any substance specified in subparagraphs (A) - (C) of this definition. It does not include devices or their components, parts, or accessories.

(35) Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(36) Emergency--A sudden change in a resident's condition requiring immediate medical intervention

(37) Exploitation--The illegal or improper act or process of a caretaker using the resources of an elderly or disabled person for monetary or personal benefit, profit, or gain.

(38) Exposure (infections)--The direct contact of blood or other potentially infectious materials of one person with the skin or mucous membranes of another person. Other potentially infectious materials include the following human body fluids: semen, vaginal secretions, cerebrospinal fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, and body fluid that is visibly contaminated with blood, and all body fluids when it is difficult or impossible to differentiate between body fluids.

(39) Facility--Unless otherwise indicated, a facility is an institution that provides organized and structured nursing care and service and is subject to licensure under Health and Safety Code, Chapter 242.

(A) For Medicaid, a facility is a nursing facility which meets the requirements of §1919(a)-(d) of the Social Security Act. A facility may not include any institution that is for the care and treatment of mental diseases except for services furnished to individuals age 65 and over and who are eligible as defined in §19.2500 of this title (relating to Preadmission Screening and Resident Review (PASARR)).

(B) For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity which participates in the program, whether that entity is comprised of all of, or a distinct part of, a larger institution.

(C) "Facility" is also referred to as a nursing home or nursing facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care of the resident; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(40) Family council--A group of family members, friends, or legal guardians of residents, who organize and meet privately or openly.

(41) Family representative--An individual appointed by the resident to represent the resident and other family members, by formal or informal arrangement.

(42) Fiduciary agent--An individual who holds in trust another's monies.

(43) Free choice--Unrestricted right to choose a qualified provider of services.

(44) Goals--Long-term: general statements of desired outcomes. Short-term: measurable time-limited, expected results that provide the means to evaluate the resident's progress toward achieving long-term goals.

(45) Governmental unit--A state or a political subdivision of the state, including a county or municipality.

(46) HCFA--Health Care Financing Administration, now the Centers for Medicare & Medicaid Services (CMS).

(47) Health care provider--An individual, including a physician, or facility licensed, certified, or otherwise authorized to administer health care, in the ordinary course of business or professional practice.

(48) Hearing--A contested case hearing held in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I.

(49) HIV--Human Immunodeficiency Virus.

(50) Incident--An abnormal event, including accidents or injury to staff or residents, which is documented in facility reports. An occurrence in which a resident may have been subject to abuse, neglect, or exploitation must also be reported to DADS.

(51) Infection control--A program designed to prevent the transmission of disease and infection in order to provide a safe and sanitary environment.

(52) Inspection--Any on-site visit to or survey of an institution by DADS for the purpose of licensing, monitoring, complaint investigation, architectural review, or similar purpose.

(53) Interdisciplinary care plan--See the definition of "comprehensive care plan."

(54) IV--Intravenous.

(55) Legend drug or prescription drug--Any drug that requires a written or telephonic order of a practitioner before it may be dispensed by a pharmacist, or that may be delivered to a particular resident by a practitioner in the course of the practitioner's practice.

(56) Licensed health professional--A physician; physician assistant; nurse practitioner; physical, speech, or occupational therapist; pharmacist; physical or occupational therapy assistant; registered professional nurse; licensed vocational nurse; licensed dietitian; or licensed social worker.

(57) Licensed nursing home (facility) administrator--A person currently licensed by DADS in accordance with Chapter 18 of this title (relating to Nursing Facility Administrators).

(58) Licensed vocational nurse (LVN)--A nurse who is currently licensed by the Board of Nurse Examiners for the State of Texas as a licensed vocational nurse.

(59) Life Safety Code (also referred to as the Code or NFPA 101)--The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

(60) Life safety features--Fire safety components required by the Life Safety Code, including, but not limited to, building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, and sprinkler systems.

(61) Life support--Use of any technique, therapy, or device to assist in sustaining life. (See §19.419 of this title (relating to Advance Directives)).

(62) Local authorities--Persons, including, but not limited to, local health authority, fire marshal, and building inspector, who may be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

(63) Local health authority--The physician appointed by the governing body of a municipality or the commissioner's court of the county to administer state and local laws relating to public health in the municipality's or county's jurisdiction as defined in Health and Safety Code, §121.021.

(64) Long-term care-regulatory--DADS' Regulatory Services Division, which is responsible for surveying nursing facilities to determine compliance with regulations for licensure and certification for Title XIX participation.

(65) Manager--A person, other than a licensed nursing home administrator, having a contractual relationship to provide management services to a facility.

(66) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, or food service.

(67) MDS--Minimum data set. See Resident Assessment Instrument (RAI).

(68) MDS nurse reviewer--A registered nurse employed by HHSC to monitor the accuracy of the MDS assessment submitted by a Medicaid-certified nursing facility.

(69) Medicaid applicant--A person who requests the determination of eligibility to become a Medicaid recipient.

(70) Medicaid nursing facility vendor payment system--Electronic billing and payment system for reimbursement to nursing facilities for services provided to eligible Medicaid recipients.

(71) Medicaid recipient--A person who meets the eligibility requirements of the Title XIX Medicaid program, is eligible for nursing facility services, and resides in a Medicaid-participating facility.

(72) Medical director--A physician licensed by the Texas Medical Board, who is engaged by the nursing home to assist in and advise regarding the provision of nursing and health care.

(73) Medical necessity (MN)--The determination that a recipient requires the services of licensed nurses in an institutional setting to carry out the physician's planned regimen for total care. A recipient's need for custodial care in a 24-hour institutional setting does not constitute a medical need. A group of health care professionals employed or contracted by the state Medicaid claims administrator contracted with HHSC makes individual determinations of medical necessity regarding nursing facility care. These health care professionals consist of physicians and registered nurses.

(74) Medical power of attorney--The legal document that designates an agent to make treatment decisions if the individual designator becomes incapable.

(75) Medical-social care plan--See Interdisciplinary Care Plan.

(76) Medically related condition--An organic, debilitating disease or health disorder that requires services provided in a nursing facility, under the supervision of licensed nurses.

(77) Medication aide--A person who holds a current permit issued under the Medication Aide Training Program as described in Chapter 95 of this title (relating to Medication Aides--Program Requirements) and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(78) Misappropriation of funds--The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

(79) Neglect--A deprivation of life's necessities of food, water, or shelter, or a failure of an individual to provide services, treatment, or care to a resident which causes or could cause mental or physical injury, or harm or death to the resident.

(80) NHIC--Formerly, this term referred to the National Heritage Insurance Corporation. It now refers to the state Medicaid claims administrator.

(81) Nonnursing personnel--Persons not assigned to give direct personal care to residents; including administrators, secretaries, activities directors, bookkeepers, cooks, janitors, maids, laundry workers, and yard maintenance workers.

(82) Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This definition does not include an individual who is a licensed health professional, a registered dietitian, or someone who volunteers such services without pay. A nurse aide is not authorized to provide nursing and/or nursing-related services for which a license or registration is required under state law. Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants.

(83) Nurse aide trainee--An individual who is attending a program teaching nurse aide skills.

(84) Nurse practitioner--A person licensed by the Texas Board of Nursing as a registered professional nurse, authorized by the Texas Board of Nursing as an advanced practice nurse in the role of nurse practitioner.

(85) Nursing assessment--See definition of "comprehensive assessment" and "comprehensive care plan."

(86) Nursing care--Services provided by nursing personnel which include, but are not limited to, observation; promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.

(87) Nursing facility/home--An institution that provides organized and structured nursing care and service, and is subject to licensure under Health and Safety Code, Chapter 242. The nursing facility may also be certified to participate in the Medicaid Title XIX program. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care to the residents; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(88) Nursing facility/home administrator--See the definition of "licensed nursing home (facility) administrator."

(89) Nursing personnel--Persons assigned to give direct personal and nursing services to residents, including registered nurses, licensed vocational nurses, nurse aides, orderlies, and medication aides. Unlicensed personnel function under the authority of licensed personnel.

(90) Objectives--See definition of "goals."

(91) OBRA--Omnibus Budget Reconciliation Act of 1987, which includes provisions relating to nursing home reform, as amended.

(92) Ombudsman--An advocate who is a certified representative, staff member, or volunteer of the DADS Office of the State Long Term Care Ombudsman.

(93) Optometrist--An individual with the profession of examining the eyes for defects of refraction and prescribing lenses for correction who is licensed by the Texas Optometry Board.

(94) Paid feeding assistant--An individual who meets the requirements of §19.1113 of this chapter (relating to Paid Feeding Assistants) and who is paid to feed residents by a facility or who is used under an arrangement with another agency or organization.

(95) PASARR--Preadmission Screening and Resident Review.

(96) Palliative Plan of Care--Appropriate medical and nursing care for residents with advanced and progressive diseases for whom the focus of care is controlling pain and symptoms while maintaining optimum quality of life.

(97) Patient care-related electrical appliance--An electrical appliance that is intended to be used for diagnostic, therapeutic, or monitoring purposes in a patient care area, as defined in Standard 99 of the National Fire Protection Association.

(98) Person--An individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity, including a legal successor of those entities.

(99) Person with a disclosable interest--A person with a disclosable interest is any person who owns at least a 5.0% interest in any corporation, partnership, or other business entity that is required to be licensed under Health and Safety Code, Chapter 242. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company, unless these entities participate in the management of the facility.

(100) Pharmacist--An individual, licensed by the Texas State Board of Pharmacy to practice pharmacy, who prepares and dispenses medications prescribed by a physician, dentist, or podiatrist.

(101) Physical restraint--See Restraints (physical).

(102) Physician--A doctor of medicine or osteopathy currently licensed by the Texas Medical Board.

(103) Physician assistant (PA)--

(A) A graduate of a physician assistant training program who is accredited by the Committee on Allied Health Education and Accreditation of the Council on Medical Education of the American Medical Association; or

(B) A person who has passed the examination given by the National Commission on Certification of Physician Assistants. According to federal requirements (42 CFR §491.2) a physician assistant is a person who meets the applicable state requirements governing the qualifications for assistant to primary care physicians, and who meets at least one of the following conditions:

(i) is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or

(ii) has satisfactorily completed a program for preparing physician assistants that:

(I) was at least one academic year in length;

(II) consisted of supervised clinical practice and at least four months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care; and

(III) was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation; or

(C) A person who has satisfactorily completed a formal educational program for preparing physician assistants who does not meet the requirements of paragraph (d)(2), 42 CFR §491.2, and has been assisting primary care physicians for a total of 12 months during the 18-month period immediately preceding July 14, 1978.

(104) Podiatrist--A practitioner whose profession encompasses the care and treatment of feet who is licensed by the Texas State Board of Podiatric Medical Examiners.

(105) Poison--Any substance that federal or state regulations require the manufacturer to label as a poison and is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally that contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a physician, are not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

(106) Practitioner--A physician, podiatrist, dentist, or an advanced practice nurse or physician assistant to whom a physician has delegated authority to sign a prescription order, when relating to pharmacy services.

(107) PRN (pro re nata)--As needed.

(108) Provider--The individual or legal business entity that is contractually responsible for providing Medicaid services under an agreement with DADS.

(109) Psychoactive drugs--Drugs prescribed to control mood, mental status, or behavior.

(110) Qualified surveyor--An employee of DADS who has completed state and federal training on the survey process and passed a federal standardized exam.

(111) Quality assessment and assurance committee--A group of health care professionals in a facility who develop and implement appropriate action to identify and rectify substandard care and deficient facility practice.

(112) Quality-of-care monitor--A registered nurse, pharmacist, or dietitian employed by DADS who is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of resident care, and functions independently of DADS' Regulatory Services Division.

(113) Recipient--Any individual residing in a Medicaid certified facility or a Medicaid certified distinct part of a facility whose daily vendor rate is paid by Medicaid.

(114) Registered nurse (RN)--An individual currently licensed by the Texas Board of Nursing as a Registered Nurse in the State of Texas.

(115) Reimbursement methodology--The method by which HHSC determines nursing facility per diem rates.

(116) Remodeling--The construction, removal, or relocation of walls and partitions, the construction of foundations, floors, or ceiling-roof assemblies, the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and emergency systems) or the conversion of space in a facility to a different use.

(117) Renovation--The restoration to a former better state by cleaning, repairing, or rebuilding, including, but not limited to, routine maintenance, repairs, equipment replacement, painting.

(118) Representative payee--A person designated by the Social Security Administration to receive and disburse benefits, act in the best interest of the beneficiary, and ensure that benefits will be used according to the beneficiary's needs.

(119) Resident--Any individual residing in a nursing facility.

(120) Resident assessment instrument (RAI)--An assessment tool used to conduct comprehensive, accurate, standardized, and reproducible assessments of each resident's functional capacity as specified by the Secretary of the U.S. Department of Health and Human Services. At a minimum, this instrument must consist of the Minimum Data Set (MDS) core elements as specified by the Centers for Medicare & Medicaid Services (CMS); utilization guidelines; and Resident Assessment Protocols (RAPS).

(121) Resident group--A group or council of residents who meet regularly to:

(A) discuss and offer suggestions about the facility policies and procedures affecting residents' care, treatment, and quality of life;

(B) plan resident activities;

(C) participate in educational activities; or

(D) for any other purpose.

(122) Responsible party--An individual authorized by the resident to act for him as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual. Authorization may be in writing or may be given orally.

(123) Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(124) Restraints (chemical)--Psychoactive drugs administered for the purposes of discipline, or convenience, and not required to treat the resident's medical symptoms.

(125) Restraints (physical)--Any manual method, or physical or mechanical device, material or equipment attached, or adjacent to the resident's body, that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. The term includes a restraint hold.

(126) RN assessment coordinator--A registered nurse who signs and certifies a comprehensive assessment of a resident's needs, using the RAI, including the MDS, as specified by DADS.

(127) RUG--Resource Utilization Group. A categorization method, consisting of 34 categories based on the MDS, that is used to determine a recipient's service and care requirements and to determine the daily rate DADS pays a nursing facility for services provided to the recipient.

(128) Seclusion--See the definition of "involuntary seclusion" in paragraph (1)(A) of this section.

(129) Secretary--Secretary of the U.S. Department of Health and Human Services.

(130) Services required on a regular basis--Services which are provided at fixed or recurring intervals and are needed so frequently that it would be impractical to provide the services in a home or family setting. Services required on a regular basis include continuous or periodic nursing observation, assessment, and intervention in all areas of resident care.

(131) SNF--A skilled nursing facility or distinct part of a facility that participates in the Medicare program. SNF requirements apply when a certified facility is billing Medicare for a resident's per diem rate.

(132) Social Security Administration--Federal agency for administration of social security benefits. Local social security administration offices take applications for Medicare, assist beneficiaries file claims, and provide information about the Medicare program.

(133) Social worker--A qualified social worker is an individual who is licensed, or provisionally licensed, by the Texas State Board of Social Work Examiners as prescribed by the Texas Occupations Code, Chapter 505, and who has at least:

(A) a bachelor's degree in social work; or

(B) similar professional qualifications, which include a minimum educational requirement of a bachelor's degree and one year experience met by employment providing social services in a health care setting.

(134) Standards--The minimum conditions, requirements, and criteria established in this chapter with which an institution must comply to be licensed under this chapter.

(135) State Medicaid claims administrator--The entity under contract with HHSC to process Medicaid claims in Texas.

(136) State plan--A formal plan for the medical assistance program, submitted to CMS, in which the State of Texas agrees to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XVIII and XIX, and all applicable federal regulations and other official issuances of the U.S. Department of Health and Human Services.

(137) State survey agency--DADS is the agency, which through contractual agreement with CMS is responsible for Title XIX (Medicaid) survey and certification of nursing facilities.

(138) Supervising physician--A physician who assumes responsibility and legal liability for services rendered by a physician assistant (PA) and has been approved by the Texas Medical Board to supervise services rendered by specific PAs. A supervising physician may also be a physician who provides general supervision of a nurse practitioner providing services in a nursing facility.

(139) Supervision--General supervision, unless otherwise identified.

(140) Supervision (direct)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. If the person being supervised does not meet assistant-level qualifications specified in this chapter and in federal regulations, the supervisor must be on the premises and directly supervising.

(141) Supervision (general)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. The person being supervised

must have access to the licensed and/or qualified person providing the supervision.

(142) Supervision (intermittent)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence, with initial direction and periodic inspection of the actual act of accomplishing the function or activity. The person being supervised must have access to the licensed and/or qualified person providing the supervision.

(143) *Texas Register*--A publication of the Texas Register Publications Section of the Office of the Secretary of State that contains emergency, proposed, withdrawn, and adopted rules issued by Texas state agencies. The *Texas Register* was established by the Administrative Procedure and Texas Register Act of 1975.

(144) Therapeutic diet--A diet ordered by a physician as part of treatment for a disease or clinical condition, in order to eliminate, decrease, or increase certain substances in the diet or to provide food which has been altered to make it easier for the resident to eat.

(145) Therapy week--A seven-day period beginning the first day rehabilitation therapy or restorative nursing care is given. All subsequent therapy weeks for a particular individual will begin on that day of the week.

(146) Threatened violation--A situation that, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety.

(147) Title II--Federal Old-Age, Survivors, and Disability Insurance Benefits of the Social Security Act.

(148) Title XVI--Supplemental Security Income (SSI) of the Social Security Act.

(149) Title XVIII--Medicare provisions of the Social Security Act.

(150) Title XIX--Medicaid provisions of the Social Security Act.

(151) Total health status--Includes functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health status, psychosocial status, and sensory and physical impairments.

(152) UAR--HHSC's Utilization and Assessment Review Section.

(153) Uniform data set--See Resident Assessment Instrument (RAI).

(154) Universal precautions--The use of barrier and other precautions by long-term care facility employees and/or contract agents to prevent the spread of blood-borne diseases.

(155) Vendor payment--Payment made by DADS on a daily-rate basis for services delivered to recipients in Medicaid-certified nursing facilities. Vendor payment is based on the nursing facility's approved-to-pay claim processed by the state Medicaid claims administrator. The Nursing Facility Billing Statement, subject to adjustments and corrections, is prepared from information submitted by the nursing facility, which is currently on file in the computer system as of the billing date. Vendor payment is made at periodic intervals, but not less than once per month for services rendered during the previous billing cycle.

(156) Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 438-3734



SUBCHAPTER E. RESIDENT RIGHTS

40 TAC §19.403

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §§242.901 - 242.906 and 242.0445, which govern the authority of family councils and the responsibility of nursing facilities related to family councils.

§19.403. Notice of Rights and Services.

(a) The facility must inform the resident, the resident's next of kin or guardian, both orally and in writing, in a language that the resident understands, of the resident's rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. This notification must be made prior to or upon admission and during the resident's stay if changed.

(b) The facility must also inform the resident, upon admission and during the stay, in a language the resident understands, of the following:

- (1) facility admission policies;
- (2) a description of the protection of personal funds as described in §19.404 of this subchapter (relating to Protection of Resident Funds);
- (3) the Human Resources Code, Title 6, Chapter 102; or a written list of the rights and responsibilities contained in the Human Resources Code, Title 6, Chapter 102;
- (4) a written description of the services available through the DADS Office of the State Long Term Care Ombudsman. This information must be made available to each facility by the ombudsman program. Facilities are responsible for reproducing this information and making it available to residents, their families, and legal representatives;
- (5) a written statement to the resident, the resident's next of kin, or guardian describing the facility's policy for:
 - (A) the drug testing of employees who have direct contact with residents; and

(B) the criminal history checks of employees and applicants for employment; and

(6) DADS' rules and the facility's policies related to the use of restraint and involuntary seclusion. This information must also be given to the resident's legally authorized representative, if the resident has one.

(c) Upon admission of a resident, a facility must:

(1) provide written information to the resident's family representative, in a language the representative understands, of the right to form a family council; or

(2) inform the resident's family representative, in writing, if a family council exists, of the council's meeting time, date, location and contact person.

(d) Receipt of information in subsections (a) - (c) of this section, and any amendments to it, must be acknowledged in writing by all parties receiving the information.

(e) The facility must post a copy of the documents specified in subsections (a) - (b) of this section in a conspicuous location.

(f) The resident or the resident's legal representative has the following rights:

(1) upon an oral or written request to the facility, to access all records pertaining to the resident, including clinical records, within 24 hours (excluding weekends and holidays); and

(2) after receipt of the resident's records for inspection, to purchase photocopies of all or any portion of the records, at a cost not to exceed the community standard, upon request and two workdays advance notice to the facility.

(g) The resident has the right to be fully informed in language the resident understands of the resident's total health status, including the resident's medical condition.

(h) The resident has the right to refuse treatment, to formulate an advance directive (as specified in §19.419 of this subchapter (relating to Advance Directives), and to refuse to participate in experimental research.

(1) If the resident refuses treatment, the resident must be informed of the possible consequences.

(2) If the resident chooses to participate in experimental research, the resident must be fully notified of the research and possible effects of the research. The research may be carried on only with the full written consent of the resident's physician, and the resident.

(3) Experimental research must comply with Federal Drug Administration regulations on human research as found in 45 Code of Federal Regulations, Part 4b, Subpart A.

(i) The facility must inform a resident before, or at the time of admission, and periodically during the resident's stay (if there are any changes), of services available in the facility and of charges for those services, including any charges for services not covered under Medicare or by the facility's per diem rate. Notice must be in writing, at least 30 days before the effective date of any changes in rates for services not covered by the current charge, or in Medicaid-certified facilities, by Medicaid.

(j) The facility must provide a written description of a resident's legal rights, which includes:

(1) a description of the manner of protecting personal funds, described in §19.404 of this subchapter;

(2) a posting of names, addresses, and telephone numbers of all pertinent state client advocacy groups such as DADS, the state ombudsman program, the protection and advocacy network, and, in Medicaid-certified facilities, the Medicaid fraud control unit; and

(3) a statement that the resident may file a complaint with DADS concerning resident abuse, neglect, and misappropriation of resident property in the facility.

(k) The facility must inform a resident of the name, specialty, and way of contacting the physician responsible for the resident's care.

(l) Notification of changes.

(1) A facility must immediately inform the resident; consult with the resident's physician; and if known, notify the resident's legal representative or an interested family member when there is:

(A) an accident involving the resident that results in injury and has the potential for requiring physician intervention;

(B) a significant change in the resident's physical, mental, or psychosocial status (that is, a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);

(C) a need to alter treatment significantly (that is, a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(D) a decision to transfer or discharge the resident from the facility.

(2) The facility also must promptly notify the resident and, if known, the resident's legal representative or interested family member when there is:

(A) a change in room or roommate assignment as described in §19.701(4)(B) of this chapter (relating to Quality of Life); or

(B) a change in resident rights under federal or state law or regulations as described in subsection (a) of this section.

(3) The facility must record and periodically update the address and phone number of the resident's family or legal representative, or a responsible party.

(m) Additional requirements for Medicaid-certified facilities. Medicaid-certified facilities must:

(1) provide the resident with the state-developed notice of rights under §1919(e)(6) of the Social Security Act (see also §19.402 of this subchapter (relating to Exercise of Rights));

(2) inform a resident who is entitled to Medicaid benefits, in writing, at the time of admission to the nursing facility or, when the resident becomes eligible for Medicaid of:

(A) the items and services that are included in nursing facility services provided under the State Plan and for which the resident may not be charged;

(B) those other items and services that the facility offers and for which the resident may be charged, and the amount of charges for those services;

(3) inform each resident when changes are made to the items and services specified in paragraphs (2)(A) and (2)(B) of this subsection;

(4) provide a written description of the requirements and procedures for establishing eligibility for Medicaid, including the right

to request an assessment under §1924(c) of the Social Security Act, which:

(A) is used to determine the extent of a couple's nonexempt resources at the time of institutionalization; and

(B) attributes to the community spouse an equitable share of resources that cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in the process of spending down to Medicaid eligibility levels; and

(5) prominently display in the facility written information, and provide to residents and potential residents oral and written information about how to apply for and use Medicare and Medicaid benefits, and how to receive funds for previous payments covered by such benefits.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 18, 2008.

TRD-200803676

Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

Effective date: September 1, 2008

Proposal publication date: January 18, 2008

For further information, please call: (512) 438-3734

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SUBCHAPTER H. QUALITY OF LIFE

40 TAC §19.701, §19.706

The amendment and new section are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §§242.901 - 242.906 and 242.0445, which govern the authority of family councils and the responsibility of nursing facilities related to family councils.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734

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SUBCHAPTER U. INSPECTIONS, SURVEYS, AND VISITS

40 TAC §19.2004

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §§242.901 - 242.906 and 242.0445, which govern the authority of family councils and the responsibility of nursing facilities related to family councils.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 18, 2008.

TRD-200803678

Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

Effective date: September 1, 2008

Proposal publication date: January 18, 2008

For further information, please call: (512) 438-3734

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Texas Medical Board

Title 22, Part 9

The Texas Medical Board adopts the review of Chapter 161, §§161.1 - 161.13, concerning General Provisions, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts amendments to §161.6 and §161.8.

The proposed review was published in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3787).

No written comments were received regarding adoption of the review. Shirley Pigott, M.D. appeared and requested to speak regarding Chapter 161, but made no comments relative to the rule review or proposed amendments to Chapter 161.

The agency's reason for adopting the rules contained in this chapter continues to exist.

This concludes the review of Chapter 161, General Provisions.

TRD-200803731

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Filed: July 22, 2008



The Texas Medical Board adopts the review of Chapter 163, §§163.1, 163.2, 163.4 - 163.11, and 163.13, concerning Licensure, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts amendments to §§163.4 - 163.6, 163.10, and 163.11

The proposed review was published in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3787).

No comments were received regarding adoption of the review.

The agency's reason for adopting the rules contained in this chapter continues to exist.

This concludes the review of Chapter 163, Licensure.

TRD-200803732

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Filed: July 22, 2008



The Texas Medical Board adopts the review of Chapter 166, §§166.1 - 166.6, concerning Physician Registration, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts amendments to §§166.1, 166.2, 166.5, and 166.6

The proposed review was published in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3787).

No comments were received regarding adoption of the review.

The agency's reason for adopting the rules contained in this chapter continues to exist.

This concludes the review of Chapter 166, Physician Registration.

TRD-200803733

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Filed: July 22, 2008



The Texas Medical Board adopts the review of Chapter 169, §§169.1 - 169.8, concerning Authority of Physicians to Supply Drugs, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts amendments to §169.2.

The proposed review was published in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3787).

No comments were received regarding adoption of the review.

The agency's reason for adopting the rules contained in this chapter continues to exist.

This concludes the review of Chapter 169, Authority of Physicians to Supply Drugs.

TRD-200803734

Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Filed: July 22, 2008

The Texas Medical Board adopts the review of Chapter 171, §§171.1 - 171.7, concerning Postgraduate Training Permits, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts amendments to §§171.3, 171.4, and 171.6, and the repeal and revision of §171.5.

The proposed review was published in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3787).

No comments were received regarding adoption of the review.

The agency's reason for adopting the rules contained in this chapter continues to exist.

This concludes the review of Chapter 171, Postgraduate Training Permits.

TRD-200803735
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Filed: July 22, 2008

The Texas Medical Board adopts the review of Chapter 172, §§172.1 - 172.13 and §172.15 concerning Temporary and Limited Licenses, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts amendments to §§172.1 - 172.3, 172.6, 172.8, and 172.13.

The proposed review was published in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3788).

No comments were received regarding adoption of the review.

The agency's reason for adopting the rules contained in this chapter continues to exist.

This concludes the review of Chapter 172, Temporary and Limited Licenses.

TRD-200803736
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Filed: July 22, 2008

The Texas Medical Board adopts the review of Chapter 184, §§184.1 - 184.9 and §§184.12 - 184.26, concerning Surgical Assistants, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts amendments to §§184.1, 184.2, 184.4 - 184.6, 184.8, 184.9, 184.18 - 184.20, and 184.26.

The proposed review was published in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3788).

No comments were received regarding adoption of the review.

The agency's reason for adopting the rules contained in this chapter continues to exist.

This concludes the review of Chapter 184, Surgical Assistants.

TRD-200803737
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Filed: July 22, 2008

The Texas Medical Board adopts the review of Chapter 193, §§193.1 - 193.12, concerning Standing Delegation Orders, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts amendments to §§193.1, 193.2, 193.4 and §§193.7 - 193.10; the repeal of §193.11; and withdraws the proposed amendments to §193.6.

The proposed review was published in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3788).

No comments were received regarding adoption of the review, although comments were received regarding proposed amendments to §193.6 and regarding the proposed repeal of §193.11. Such comments are itemized elsewhere in this issue of the *Texas Register*.

The agency's reason for adopting the rules contained in this chapter continues to exist.

This concludes the review of Chapter 193, Standing Delegation Orders.

TRD-200803738
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Filed: July 22, 2008

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 40 TAC §90.236(1)

PER DIEM PENALTIES FOR FACILITIES SERVING PERSONS WITH MENTAL RETARDATION AND/OR RELATED CONDITIONS

DESCRIPTION OF VIOLATION	SIZE OF FACILITY	FIRST OFFENSE (1) No Right to Correct	SECOND OFFENSE (2) No Right to Correct	THIRD OFFENSE (3) No Right to Correct
A. A violation that DADS determines has resulted in an outcome described in §90.240(b)(1)-(3) of this subchapter (relating to Right to Correct)				
1. A violation that DADS determines has resulted in serious harm to or death of a resident.	59 beds or less	\$1000	\$1000	\$1000
2. A violation that DADS determines has resulted in serious harm to or death of a resident.	60 or more beds	\$5000	\$5000	\$5000
3. A violation that DADS determines constitutes a serious threat to the health and safety of a resident.	59 beds or less	\$1000	\$1000	\$1000
4. A violation that DADS determines constitutes a serious threat to the health and safety of a resident.	60 or more beds	\$5000	\$5000	\$5000
5. A violation that DADS determines substantially limits the facility's capacity to provide care.	59 beds or less	\$1000	\$1000	\$1000
6. A violation that DADS determines substantially limits the facility's capacity to provide care.	60 or more beds	\$5000	\$5000	\$5000
B. Actions described in subsection (a)(2)-(8) of this section (relating to Administrative Penalties)				
1. Making a false statement that the person knows or should know is false, of a material fact on an application for issuance or renewal of a license or in documentation submitted to DADS in support of the application.	59 beds or less	\$500	\$750	\$1000
2. Making a false statement that the person knows or should know is false, of a material fact on an application for issuance or renewal of a license or in documentation submitted to DADS in support of the application.	60 or more beds	\$500	\$3500	\$5000

DESCRIPTION OF VIOLATION	SIZE OF FACILITY	FIRST OFFENSE (1) No Right to Correct	SECOND OFFENSE (2) No Right to Correct	THIRD OFFENSE (3) No Right to Correct
3. Making a false statement that the person knows or should know is false, of a material fact with respect to a matter under investigation by DADS.	59 beds or less	\$500	\$750	\$1000
4. Making a false statement that the person knows or should know is false, of a material fact with respect to a matter under investigation by DADS.	60 or more beds	\$500	\$3500	\$5000
5. Refusing to allow a representative of DADS to inspect a book, record, or file required to be maintained by the person.	59 beds or less	\$500	\$750	\$1000
6. Refusing to allow a representative of DADS to inspect a book, record, or file required to be maintained by the person.	60 or more beds	\$500	\$3500	\$5000
7. Refusing to allow a representative of DADS to inspect any portion of the premises a facility.	59 beds or less	\$500	\$750	\$1000
8. Refusing to allow a representative of DADS to inspect any portion of the premises a facility.	60 or more beds	\$500	\$3500	\$5000
9. Willfully interfering with the work of a representative of DADS or the enforcement of Texas Health and Safety Code, Chapter 252.	59 beds or less	\$500	\$750	\$1000
10. Willfully interfering with the work of a representative of DADS or the enforcement of Texas Health and Safety Code, Chapter 252.	60 or more beds	\$500	\$3500	\$5000
11. Willfully interfering with a representative of DADS preserving evidence of a violation of Texas Health and Safety Code, Chapter 252, or a rule, standard, or order adopted or license issued under that chapter.	59 beds or less	\$500	\$750	\$1000
12. Willfully interfering with a representative of DADS preserving evidence of a violation of Texas Health and Safety Code, Chapter 252, or a rule, standard, or order adopted or license issued under that chapter.	60 or more beds	\$500	\$3500	\$5000

DESCRIPTION OF VIOLATION	SIZE OF FACILITY	FIRST OFFENSE (1) No Right to Correct	SECOND OFFENSE (2) No Right to Correct	THIRD OFFENSE (3) No Right to Correct
13. Failing to pay a penalty assessed by DADS under Texas Health and Safety Code, Chapter 252, not later than the 10th day after the date the assessment of the penalty becomes final.	59 beds or less	\$500	\$750	\$1000
14. Failing to pay a penalty assessed by DADS under Texas Health and Safety Code, Chapter 252, not later than the 10th day after the date the assessment of the penalty becomes final.	60 or more beds	\$500	\$3500	\$5000
15. Failing to submit a plan of correction to DADS within 10 working days after receiving the final statement of licensing violations.	59 beds or less	\$500	\$750	\$1000
16. Failing to submit a plan of correction to DADS within 10 working days after receiving the final statement of licensing violations.	60 or more beds	\$500	\$3500	\$5000
17. Failing to notify DADS of a change in ownership before the effective date of that change of ownership.	59 beds or less	\$500	\$750	\$1000
18. Failing to notify DADS of a change in ownership before the effective date of that change of ownership.	60 or more beds	\$500	\$3500	\$5000

Figure: 40 TAC §90.236(m)

PER DIEM PENALTIES FOR FACILITIES SERVING PERSONS WITH MENTAL RETARDATION AND/OR RELATED CONDITIONS

DESCRIPTION OF CONDITIONS AND ELEMENTS OF CONDITIONS	SIZE OF FACILITY	FIRST OFFENSE (1) With Correction	FIRST OFFENSE (1) Without Correction	SECOND OFFENSE (2) With Correction	SECOND OFFENSE (2) Without Correction	THIRD OFFENSE (3) With Correction	THIRD OFFENSE (3) Without Correction
<p>A. Failure to maintain requirements in accordance with the National Fire Protection Association Life Safety Code. Assessment of administrative penalties in these areas are determined by Life Safety Code surveyors. <u>Severity and scope:</u> A violation of numbers 1, 2, 3 and 4 compromises the fire safety design of the facility. Number 5 has different penalties for isolated incidents as opposed to a pattern of problems. An isolated instance would be 1 fire extinguisher unavailable at a required location. A pattern would be multiple extinguishers not in place or repeated incidents of a missing fire extinguisher</p>	60 or more beds	\$0	\$500	\$0	\$3500	\$0	\$5000
	60 or more beds	\$0	\$500	\$0	\$3500	\$0	\$5000
	60 or more beds	\$0	\$500	\$0	\$3500	\$0	\$5000
	60 or more beds	\$0	\$500	\$0	\$3500	\$0	\$5000
	60 or more beds	\$0	\$500	\$0	\$3500	\$0	\$5000
5. Portable fire extinguishers are not available at required locations.	60 or more beds	\$0	Isolated \$350	Pattern \$500	\$0	\$0	\$5000

DESCRIPTION OF CONDITIONS AND ELEMENTS OF CONDITIONS	SIZE OF FACILITY	FIRST OFFENSE (1) With Correction	FIRST OFFENSE (1) Without Correction	SECOND OFFENSE (2) With Correction	SECOND OFFENSE (2) Without Correction	THIRD OFFENSE (3) With Correction	THIRD OFFENSE (3) Without Correction
A. Failure to maintain requirements in accordance with the National Fire Protection Association Life Safety Code. Assessment of administrative penalties in these areas are determined by Life Safety Code surveyors. Severity and scope: A violation of numbers 1, 2, 3 and 4 compromises the fire safety design of the facility. Number 5 has different penalties for isolated incidents as opposed to a pattern of problems. An isolated incident would be one fire extinguisher unavailable at a required location. A pattern would be multiple extinguishers being out of place.							
6. Required fire sprinkler system is not functioning, or system water supply is turned off.	59 beds or less	\$0	\$100	\$0	\$750	\$0	\$1000
7. Required fire sprinkler system is not functioning in total or in the majority of components.	59 beds or less	\$0	\$100	\$0	\$750	\$0	\$1000
8. The generator will not start automatically within the required time period or will not transfer and carry load; or emergency battery system does not illuminate or maintain required illumination for the required time.	16 beds or less	NA	NA	NA	NA	NA	NA
	17-59 beds	\$0	\$100	\$0	\$750	\$0	\$1000
9. Doors in required smoke barrier walls, or in required fire walls, will not close as required.	59 beds or less	\$0	\$100	\$0	\$750	\$0	\$1000
10. Portable fire extinguishers are not available at required locations.	59 beds or less	\$0	Isolated \$100 Pattern \$200	\$0	\$750	\$0	\$1000

DESCRIPTION OF CONDITIONS AND ELEMENTS OF CONDITIONS	SIZE OF FACILITY	FIRST OFFENSE (1) With Correction	FIRST OFFENSE (1)		SECOND OFFENSE (2) With Correction	SECOND OFFENSE (2) Without Correction	THIRD OFFENSE (3) With Correction	THIRD OFFENSE (3) Without Correction
			Without Isolated	Correction Pattern				
<p>B. Failure to provide tube feeding/syringe feedings in accordance with physician's orders and/or established feeding administration procedures.</p> <p>These areas are requirements of Licensing Standards for ICFMR/RC Facilities, §90.42(e)(6). Assessment of administrative penalties in these areas must result from licensure deficiencies as reflected on Licensing Inspection report, Form 3724. Additionally, for an administrative penalty to be assessed for violation of B.2., licensure violation (federal standard W368) must be cited on the Health Care Financing Administration Form 2567, Statement of Deficiencies, resulting from a citation for noncompliance with licensure rules based on this standard.</p> <p><u>Scope and severity:</u> There are different penalties for isolated incidents as opposed to patterns of problems. An isolated incident affects one individual one time. Multiple incidents that affect one or more individuals constitute a pattern of problems.</p>								
	59 beds or less	\$0	\$100	\$200	\$0	\$750	\$0	\$1000
	60 beds or more	\$0	\$200	\$300	\$0	\$3500	\$0	\$5000
	59 beds or less	\$0	\$100	\$200	\$0	\$750	\$0	\$1000
	60 beds or more	\$0	\$400	\$500	\$0	\$3500	\$0	\$5000
2. The quality and/or quantity of the formula administered is not as ordered by the physician	59 beds or less	\$0	\$100	\$200	\$0	\$750	\$0	\$1000
	60 beds or more	\$0	\$400	\$500	\$0	\$3500	\$0	\$5000
3. Improper technique is used in feeding.	59 beds or less	\$0	\$100	\$200	\$0	\$750	\$0	\$1000
	60 beds or more	\$0	\$400	\$500	\$0	\$3500	\$0	\$5000

DESCRIPTION OF CONDITIONS AND ELEMENTS OF CONDITIONS	SIZE OF FACILITY	FIRST OFFENSE (1) With Correction	FIRST OFFENSE (1) Without Correction	SECOND OFFENSE (2) With Correction	SECOND OFFENSE (2) Without Correction	THIRD OFFENSE (3) With Correction	THIRD OFFENSE (3) Without Correction
<p>C. Compliance Principle 42 CFR §483.410 Governing Body. The Condition of Participation of Governing Body is met when the other Conditions of Participation are also met.</p> <p><u>Scope and severity:</u> This condition not being met is always the result of a pattern of problems.</p> <p>The Condition of Participation is not met when:</p> <p>One or more of the other seven Conditions of Participation are not met and the governing body had failed to take action that identifies and resolves systematic problems of a serious and recurrent nature; or</p> <p>The facility has been denied any license or approval required by federal, state, or local law by the authority having jurisdiction for that law.</p>	59 beds or less	\$0	\$100	\$0	\$750	\$0	\$1000
	60 or more beds	\$0	\$500	\$0	\$3500	\$0	\$5000
	59 beds or less	\$0	\$100	\$0	\$750	\$0	\$1000
	60 or more beds	\$0	\$500	\$0	\$3500	\$0	\$5000

DESCRIPTION OF CONDITIONS AND ELEMENTS OF CONDITIONS	SIZE OF FACILITY	FIRST OFFENSE (1) With Correction	FIRST OFFENSE (1)		SECOND OFFENSE (2) With Correction	SECOND OFFENSE (2) Without Correction	THIRD OFFENSE (3) With Correction	THIRD OFFENSE (3) Without Correction
			Without Isolated	Correction Pattern				
D. Compliance Principle 42 CFR §483.420 Client Protections. The Condition of Participation of Client Protections is met when individuals are free from abuse and neglect; individuals are free from unnecessary drugs and restraints; and individual freedoms are promoted (e.g., individuals have choice and opportunities in their money management, community involvement, interpersonal relationships, daily routines, etc.).	59 beds or less	\$0	\$100	\$200	\$0	\$750	\$0	\$1000
	60 beds or more	\$0	\$500	\$750	\$0	\$3500	\$0	\$5000
<p>The Condition of Participation is not met when:</p> <p>Individuals have been abused, neglected or otherwise mistreated and the facility has not taken steps to protect individuals and prevent reoccurrence; or</p> <p>Individuals are subjected to the use of drugs or restraints without justification; or</p> <p>Individual freedoms are denied or restricted without justification (e.g. systematic lack of privacy, of freedom of access to the community or to other individuals, in use of personal possessions and money, etc.).</p>								

DESCRIPTION OF CONDITIONS AND ELEMENTS OF CONDITIONS	SIZE OF FACILITY	FIRST OFFENSE (1) With Correction	FIRST OFFENSE (1) Without Correction	SECOND OFFENSE (2) With Correction	SECOND OFFENSE (2) Without Correction	THIRD OFFENSE (3) With Correction	THIRD OFFENSE (3) Without Correction
<p>E. Compliance Principle</p> <p>42 CFR §483.430 Facility Staffing.</p> <p>The Condition of Participation of Facility Staffing is met when: the Condition of Participation of Active Treatment is met (i.e., there are sufficient numbers of competent, trained staff to provide active treatment); and the Condition of Participation of Client Protections is met (i.e., there are sufficient numbers of competent, trained staff to protect individual's health and safety).</p> <p>Scope and severity This condition being unmet is always the result of a pattern of problems.</p> <p>The Condition of Participation is not met when:</p> <p>The Condition of Participation of Active Treatment is not met and the lack of active treatment has resulted from insufficient numbers of staff or lack of trained, knowledgeable staff to design and carry out the individual's programs; or</p> <p>The Condition of Participation of Client Protections has first been determined to be not met and the lack of client protection has resulted from insufficient numbers of competent, trained staff to protect the health and safety of individuals.</p>	59 beds or less	\$0	\$200	\$0	\$750	\$0	\$1000
	60 beds or more	\$0	\$200	\$0	\$3500	\$0	\$5000

DESCRIPTION OF CONDITIONS AND ELEMENTS OF CONDITIONS	SIZE OF FACILITY	FIRST OFFENSE (1) With Correction	FIRST OFFENSE (1) Without Correction	SECOND OFFENSE (2) With Correction	SECOND OFFENSE (2) Without Correction	THIRD OFFENSE (3) With Correction	THIRD OFFENSE (3) Without Correction
<p><u>F. Compliance Principle</u> 42 CFR §483.440 Active Treatment Services. The Condition of Participation of Active Treatment Services are met when individuals have increased skill and independence in functional life areas (i.e., communication, socialization, toileting, bathing, household tasks, use of community, etc.) and in the presence of degenerating conditions, individual's functioning is maintained to the maximum extent possible; and Individuals receive continuous, competent training, supervision and support which promotes skills and independence; and Individuals need continuous, competent training supervision and support in order to function on a daily basis.</p> <p>Scope and severity: Not meeting the condition of participation of active treatment is always a pattern of problems and not an isolated incident.</p>	59 beds or less	\$0	\$200	\$0	\$750	\$0	\$1000
	60 beds or more	\$0	\$200	\$0	\$3500	\$0	\$5000
<p>The Condition of Participation is not met when:</p> <p>Individual's functional abilities have decreased or have not improved and the facility has failed to identify barriers and implement a plan to maximize or overcome barriers; or</p> <p>Individuals are not involved in activities which address their individualized priority needs; or</p> <p>Individuals do not have opportunities to practice new or existing skills and to make choices in their daily routines; or</p> <p>Individuals are able to function independently without continuous training, supervision and support by the staff.</p>							

DESCRIPTION OF CONDITIONS AND ELEMENTS OF CONDITIONS	SIZE OF FACILITY	FIRST OFFENSE (1) With Correction	FIRST OFFENSE (1)		SECOND OFFENSE (2) With Correction	SECOND OFFENSE (2) Without Correction	THIRD OFFENSE (3) With Correction	THIRD OFFENSE (3) Without Correction
			Without Correction Isolated	Pattern				
<p>G. Compliance Principle</p> <p>42 CFR §483.450 Client Behavior and Facility Practices.</p> <p>The Condition of Participation is met when: individual programs and activities regularly include use of positive techniques, teaching strategies and supports; efforts are made to reduce and eliminate use of restrictive techniques with positive results; and staff teach and reinforce appropriate behaviors such as communication skills, social skills, independence and choice-making skills, and leisure skills which serve as functional substitutes for inappropriate behaviors; and restrictive techniques are used only when warranted by the severity of the behavior, and result in desired behavioral outcomes.</p> <p>Scope and severity: There are different penalties for isolated incidents as opposed to patterns of problems. An isolated incident affects one individual one time. Multiple incidents that affect one or more individuals constitute a pattern of problems.</p>	59 beds or less	\$0	\$100	\$200	\$0	\$750	\$0	\$1000
	60 beds or more	\$0	\$500	\$750	\$0	\$3500	\$0	\$5000
<p>The Condition of Participation is not met when:</p> <p>Restrictive, intrusive techniques are used to manage or control behavior in lieu of positive teaching strategies; or</p> <p>Individuals are physically or psychologically injured or harmed as a result of the use of restrictive interventions and the facility has failed to adequately monitor the use of the intervention; or</p> <p>Restrictive interventions are used when they are not warranted or without first attempting less restrictive more positive measures.</p>								

DESCRIPTION OF CONDITIONS AND ELEMENTS OF CONDITIONS	SIZE OF FACILITY	FIRST OFFENSE (1) With Correction	FIRST OFFENSE (1) Without Correction		SECOND OFFENSE (2) With Correction	SECOND OFFENSE (2) Without Correction	THIRD OFFENSE (3) With Correction	THIRD OFFENSE (3) Without Correction
			Isolated	Pattern				
<p>H. Compliance Principle 42 CFR §483.460 Health Care Services. The Condition of Participation for Health Care Services is met when individuals receive preventive services and prompt treatment for acute and chronic health conditions; and the individual's health is improved or maintained unless the deterioration is due to a documented clinical condition for which deterioration or lack of improvement is an accepted prognosis.</p> <p>Scope and severity: There are different penalties for isolated incidents as opposed to patterns of problems. An isolated incident is one incident for one person. A pattern exists when there is more than one person involved or multiple incidents for a single individual.</p> <p>The Condition of Participation is not met when:</p>	59 beds or less	\$0	\$100	\$200	\$0	\$750	\$0	\$1000
	60 beds or more	\$0	\$500	\$750	\$0	\$3500	\$0	\$5000
Individuals do not receive adequate health care monitoring and services, including appropriate and timely follow-up based upon their individualized need for service.								

DESCRIPTION OF CONDITIONS AND ELEMENTS OF CONDITIONS	SIZE OF FACILITY	FIRST OFFENSE (1) With Correction	FIRST OFFENSE (1) Without Correction		SECOND OFFENSE (2) With Correction	SECOND OFFENSE (2) Without Correction	THIRD OFFENSE (3) With Correction	THIRD OFFENSE (3) Without Correction
			Isolated	Pattern				
<p>I. Compliance Principle</p> <p>42 CFR §483.470 Physical Environment.</p> <p>The Condition of Participation of Physical Environment is met when the environment promotes the health and safety, independence and learning of the individuals.</p> <p>Scope and severity: There are different penalties for isolated incidents as opposed to patterns of problems. An isolated incident affects one individual one time. Multiple incidents that affect one or more individuals constitute a pattern of problems.</p> <p>The Condition of Participation is not met when:</p> <p>Environmental conditions interfere with learning and independence to such an extent that the Condition of Participation for active treatment is not met; or</p> <p>Individuals are at risk to health and safety; or</p> <p>Poor infection control practices are observed and there is a high rate of infections or communicable diseases among the individuals residing in the facility.</p>	59 beds or less	\$0	\$100	\$200	\$0	\$750	\$0	\$1000
	60 beds or more	\$0	\$400	\$500	\$0	\$3500	\$0	\$5000

DESCRIPTION OF CONDITIONS AND ELEMENTS OF CONDITIONS	SIZE OF FACILITY	FIRST OFFENSE (1) With Correction	FIRST OFFENSE (1) Without Correction		SECOND OFFENSE (2) With Correction	SECOND OFFENSE (2) Without Correction	THIRD OFFENSE (3) With Correction	THIRD OFFENSE (3) Without Correction
			Isolated	Pattern				
<p>J. Compliance Principle 42 CFR §483.480 Condition of Participation: Dietetic Services. The Condition of Participation of Dietary Services is met when:</p> <p>The individuals maintain body weights and lab levels considered acceptable for their age, height, body type and clinical condition or are receiving services and supports to assist them to do so; and</p> <p>Individuals participate in normalized dining experiences appropriate to their functioning abilities (e.g.; using knives, family style meals, going to restaurants, etc.) and are being taught skills to do so.</p> <p>Scope and severity: There are different penalties for isolated incidents as opposed to patterns of problems. An isolated incident is an incident that affects one individual. Multiple incidents that affect one or more individuals constitute a pattern of problems.</p> <p>The Condition of Participation is not met when:</p> <p>Individuals experience excessive weight loss or gain, abnormal lab levels, or deterioration in health as a result of an inadequate diet; or</p> <p>Individuals do not receive training and supports which enable them to eat as independently and in as normalized manner as possible.</p>	59 beds or less	\$0	\$100	\$200	\$0	\$750	\$0	\$1000
	60 beds or more	\$0	\$300	\$400	\$0	\$3500	\$0	\$5000

Figure: 40 TAC §92.4(e)

Facility Type	New or Conversion: Single story	New or Conversion: Multiple story	Addition or Remodeling	Alzheimer's Certification
Small Type A (4 to 16 beds based on residential board and care occupancy of the Life Safety Code, Chapter 21-2 Slow)	\$900	\$1,100	2% of construction cost Minimum: \$350 Maximum: 50% of the plan review fee for a new facility of the same type	Not applicable
Large Type A (17 or more beds based on residential board and care of the Life Safety Code, Chapter 21-3)	17-80 beds: \$1,100	17-80 beds: \$1,650	2% of construction cost	Not applicable
	81-120 beds: \$1,650	81-120 beds: \$2,150	Minimum: \$400 Maximum: 50% of the plan review fee for a new facility of the same type	
	121+ beds: \$14 per bed	121+ beds: \$18 per bed		
Small Type B (4 to 16 beds based on residential board and care occupancy of the Life Safety Code, Chapter 21-2 Impractical)	\$1,100	\$1,650	2% of construction cost Minimum: \$350 Maximum: 50% of the plan review fee for a new facility of the same type	\$350 additional fee
Large Type B (17 or more beds based on the health care occupancy of the Life Safety Code, Chapter 12)	17-80 beds: \$1,600	17-80 beds: \$2,100	2% of construction cost	\$550 additional fee
	81-120 beds: \$2,150	81-120 beds: \$2,650	Minimum: \$500 Maximum: 50% of the plan review fee for a new facility of the same type	
	121+ beds: \$18 per bed	121+ beds: \$22 per bed		

Figure: 40 TAC §92.551(d)

ADMINISTRATIVE PENALTY SCHEDULE	SMALL FACILITY (4-16 beds)		LARGE FACILITY (17+ beds)	
	Business entity owns one facility	Business entity owns multiple facilities	Business entity owns one facility	Business entity owns multiple facilities
§92.3 Types of Assisted Living Facilities	\$300	\$450	\$500	\$650
§92.4. License Fees	\$300	\$400	\$500	\$600
§92.11. Criteria for Licensing	\$300	\$450	\$500	\$650
§92.16. Change of Ownership	\$300	\$400	\$500	\$600
§92.18. Increase in Capacity	\$300	\$400	\$500	\$600
§92.41. Standards for Type A, Type B, and Type E Assisted Living Facilities				
(a) employees	\$350	\$550	\$750	\$950
(b) social services	\$200	\$300	\$400	\$500
(c) resident assessment	\$400	\$550	\$600	\$750
(d) resident policies	\$250	\$350	\$450	\$550
(e) admission policies	\$300	\$400	\$500	\$600
(f) inappropriate placement in Type A or Type B facilities	Not applicable	Not applicable	Not applicable	Not applicable
(g) advance directives	\$500	\$500	\$500	\$500
(h) resident records	\$200	\$300	\$400	\$500
(i) personnel records	\$200	\$300	\$400	\$500
(j) medications	\$400	\$500	\$600	\$700
(k) accident, injury, or acute illness	\$400	\$500	\$600	\$700
(l) resident finances	\$200	\$300	\$400	\$500
(m) food and nutrition services	\$400	\$550	\$700	\$850
(n) infection control	\$400	\$550	\$700	\$850
(o) access to residents	\$150	\$200	\$250	\$300
(p) restraints	\$700	\$800	\$900	\$1,000
(q) accreditation status	\$700	\$800	\$900	\$1,000
§92.51. Licensure of Facilities for Persons with Alzheimer's Disease	\$200	\$300	\$400	\$500
§92.53. Standards for Certified Alzheimer's Assisted Living Facilities	\$400	\$500	\$600	\$700
§92.54. Advertisements, Solicitations, and Promotional Material	\$250	\$350	\$450	\$550
§92.61. Facility Construction-Introduction and Application	\$300	\$400	\$500	\$600
§92.62. General Requirements	\$350	\$450	\$550	\$650
§92.71. Introduction and Application: Type E Facilities	\$300	\$400	--	--
§92.72. General Requirements:	\$300	\$400	--	--

ADMINISTRATIVE PENALTY SCHEDULE	SMALL FACILITY (4-16 beds)		LARGE FACILITY (17+ beds)	
	Business entity owns one facility	Business entity owns multiple facilities	Business entity owns one facility	Business entity owns multiple facilities
Type E Facilities				
§92.81. Inspections and Surveys	\$300	\$400	\$500	\$600
§92.82. Determinations and Actions Pursuant to Inspections	\$200	\$300	\$400	\$500
§92.102. Abuse, Neglect, Exploitation Reportable to DADS by Facilities	\$700	\$800	\$900	\$1,000
§92.123. Investigation of Facility Employees	\$450	\$550	\$650	\$750
§92.125. Resident's Bill of Rights and Provider Bill of Rights				
(a) resident's bill of rights	--	--	--	--
(1) post and provide copy of bill	\$100	\$150	\$200	\$250
(2) right to exercise civil rights	\$150	\$200	\$250	\$300
(3) each resident has the right to:	--	--	--	--
(A) be free from physical, mental abuse, corporal punishment, physical, chemical restraints for discipline/convenience	\$700	\$800	\$900	\$1,000
(B) participate in activities	\$150	\$200	\$250	\$300
(C) religion of choice	\$150	\$200	\$250	\$300
(D) if MR, participate in behavior modification with guardian consent	\$150	\$200	\$250	\$300
(E)(i)-(iii)--be treated with respect, consideration, dignity	\$200	\$250	\$300	\$350
(F) safe, decent living environment	\$100	\$150	\$200	\$250
(G) communicate in native language	\$100	\$150	\$200	\$250
(H) complain about care, treatment	\$200	\$250	\$300	\$350
(I) receive and send mail	\$100	\$150	\$200	\$250
(J) unrestricted communication	\$150	\$200	\$250	\$300
(K) make community contacts	\$100	\$150	\$200	\$250
(L) manage financial affairs	\$100	\$150	\$200	\$250
(M)(i)-(ii) access resident records	\$100	\$150	\$200	\$250
(N) choose physician and be informed about treatment and care	\$100	\$150	\$200	\$250
(O) help develop individual service plan	\$100	\$150	\$200	\$250

ADMINISTRATIVE PENALTY SCHEDULE	SMALL FACILITY (4-16 beds)		LARGE FACILITY (17+ beds)	
	Business entity owns one facility	Business entity owns multiple facilities	Business entity owns one facility	Business entity owns multiple facilities
(P)(i)-(ii) opportunity to refuse medical treatment or services	\$100	\$150	\$200	\$250
(Q) unaccompanied access to telephone	\$100	\$150	\$200	\$250
(R) privacy	\$100	\$150	\$200	\$250
(S) retain and use personal possessions	\$100	\$150	\$200	\$250
(T) determine personal preference in dress, hair style, personal effects	\$100	\$150	\$200	\$250
(U) retain and use personal property	\$100	\$150	\$200	\$250
(V) refuse to perform services	\$100	\$150	\$200	\$250
(W)(i)-(ii) be informed about Medicare, Medicaid, and covered items/services	\$100	\$150	\$200	\$250
(X)(i)-(v) not be transferred/discharged except under specific conditions	\$300	\$350	\$400	\$450
(Y)(i)-(v) not be transferred/discharged except in an emergency without specific written notice	\$300	\$350	\$400	\$450
(Z) leave facility temporarily or permanently	\$100	\$150	\$200	\$250
(AA) access the Ombudsman program	\$100	\$150	\$200	\$250
(BB) execute an advance directive or designate a guardian for decisions	\$200	\$250	\$300	\$350
§92.127. Required Posting	\$250	\$350	\$450	\$550
§92.129. Authorized Electronic Monitoring (AEM)	\$100	\$150	\$200	\$250
§§92.351-92.374. Emergency License Suspension and Closing Order	\$150	\$250	\$350	\$450
§§92.551-92.595. Administrative Penalties	\$400	\$500	\$600	\$700

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of July 11, 2008, through July 17, 2008. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on July 23, 2008. The public comment period for this project will close at 5:00 p.m. on August 22, 2008.

FEDERAL AGENCY ACTIONS:

Applicant: Houston Fuel Oil Terminal Company; Location: The project is located on Carpenters Bayou, approximately 20 miles upstream from the confluence of Carpenters Bayou with the Houston Ship Channel, across from Port of Houston Jacintoport Terminals, at the 16375 Block of Jacintoport Boulevard, in Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Highlands, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting: 295282; Northing: 3293918. Project Description: The applicant proposes to dredge 1.04 acres of wetlands and to impact 0.06 acre of wetlands during the construction of an access bridge and pipe rack. The applicant also proposes to construct twelve 48-inch mooring dolphins and two 30- by 60-foot docks. The proposed work is associated with the construction of a new barge dock. The applicant proposes to mitigate for the proposed impacts by placing 1.91 acres of wetlands and 3.85 acres of uplands, for a total of 5.76 acres, into a conservation easement in the form of a deed restriction. CCC Project No.: 08-0187-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00275 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy the consistency certifications for inspection, may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200803674

Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: July 18, 2008

Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this Request for Proposals (RFP 189a) for provision of statistician consulting services to the Comptroller. The successful respondent will advise the Comptroller on statistical issues and provide other related services in connection with the Comptroller's Annual Property Value Study (Study). The successful respondent will be expected to begin performance of the Contract on or about September 1, 2008, or as soon thereafter as practical.

Background: The Comptroller requires highly specialized statistical consulting expertise and experience for the services to be provided under the Contract. The Consultant will advise the Comptroller periodically during the year regarding complex statistical and other issues relating to the Study and provide all other reasonably-related services. The anticipated contract budget is not to exceed \$45,000.00.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, Room-201, LBJ State Office Building, 111 East 17th St., Austin, Texas 78774, telephone number: (512) 936-5854, regarding the request. The Comptroller will provide further information only to those specifically requesting it. Non-mandatory Letters of Intent and questions must be sent in writing via facsimile to Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, facsimile number: (512) 463-3669. All Non-mandatory Letters of Intent, questions, and inquiries must be received in writing no later than 2:00 p.m. Central Zone Time (CZT) on Friday, August 8, 2008. Official responses to questions and inquiries received by the deadline will be posted electronically on or about Friday, August 15, 2008, or as soon thereafter as practicable, on the Electronic State Business Daily, located at the following URL: <http://esbd.cpa.state.tx.us>. Late Letters of Intent and Questions received after the deadline will not be considered. Respondents are solely responsible for verifying timely receipt of all letters and questions in the Issuing Office on or before the deadline; late letters of intent and questions may not be accepted.

Closing Date: To be considered, all proposals must be received at the foregoing address in the issuing office on or before 2:00 p.m. CZT on Friday, August 22, 2008. Proposals received after this time and date will not be considered. Respondents are solely responsible for verifying timely receipt of all proposals in the Issuing Office on or before the deadline; late proposals will not be accepted.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the Request for Proposals. The Comptroller will make the final decision. The Comptroller reserves the right to accept or reject

any or all proposals submitted. The Comptroller is under no legal or other obligation to execute any contracts on the basis of this notice. The Comptroller shall pay for no costs incurred by any entity in responding to this RFP.

The anticipated schedule of events is as follows: Issuance of RFP - August 1, 2008, after 10:00 a.m. CZT; Deadline for Questions and Non-mandatory Letters of Intent - 2:00 p.m. CZT, August 8, 2008; Release of Official Responses to Questions - after 2:00 p.m. CZT, August 15, 2008, or as soon thereafter as practical; Deadline for Proposals - 2:00 p.m. CZT, August 22, 2008; Contract Execution - September 1, 2008, or as soon thereafter as practical; Commencement of Project Activities - September 1, 2008.

TRD-200803774

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: July 23, 2008

Texas Education Agency

Request for Applications Concerning Public Senior College/University Open-Enrollment Charter Guidelines and Application

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-08-119 from eligible entities to operate open-enrollment charter schools. Eligible entities are limited to Texas public senior colleges and universities.

Description. The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter school offers flexibility and choice for educators, parents, and students. A public senior college or university open-enrollment charter school may operate on the campus of the public senior college or university or in the same county in which the campus of the public senior college or university is located.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade level(s) as provided by the charter. A charter school must be non-sectarian in its programs, admissions, policies, employment practices, and all other operations, and may not be affiliated with a sectarian school or religious institution. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in the Texas Education Code (TEC), §12.156, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability to the same extent as a school district trustee. An employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered

under the system to the same extent a qualified employee of a school district is covered.

Dates of Project. Completed applications can be received by the TEA Document Control Center at 1701 North Congress Avenue, Austin, Texas, 78701-1494, Room 6-108, at any time.

Project Amount. TEC, §12.106(a), states that a charter holder is entitled to receive funding for the open-enrollment charter school under Chapter 42 as if the school were a school district without a tier one local share for purposes of §42.253 and without any local revenue for purposes of §42.302. In determining funding for an open-enrollment charter school, adjustments under §§42.102, 42.103, 42.104, and 42.105 and the district enrichment tax rate under §42.302 are based on the average adjustment and average district enrichment tax rate for the state. TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from the agency or the commissioner in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. An open-enrollment charter school may not charge tuition and must admit students based on a lottery if more students apply for admission than can be accommodated. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. However, a charter school that specializes in the performing arts may require a student to demonstrate artistic ability and may require an applicant to audition. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, a juvenile court adjudication, or a discipline problem under TEC, Chapter 37, Subchapter A.

Selection Criteria. A complete description of selection criteria is included in the RFA.

The State Board of Education (SBOE) may approve open-enrollment charter schools as provided in TEC, §12.101 and §12.152. There is a cap of 215 charters approved under TEC, §12.101, and no cap on the number of charters approved under TEC, §12.152.

The SBOE will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school.

Requesting the Application. An application must be submitted under SBOE guidelines to be considered. A complete copy of the publication *Public Senior College/University Open-Enrollment Charter Guidelines and Application* (RFA #701-08-119), which includes an application and procedures, may be obtained by writing the Division of Charter School Administration, Room 5-107, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, 78701-1494; by calling (512) 463-9575; or at <http://www.tea.state.tx.us/charter/rfas/rfascharter.htm>.

Further Information. For clarifying information about the public senior college/university open-enrollment charter school application, contact Mary Perry, Division of Charter School Administration, Texas Education Agency, at (512) 463-9575 or mary.perry@tea.state.tx.us.

TRD-200803761

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: July 23, 2008

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 2, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 2, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Aviation Technology, Inc.; DOCKET NUMBER: 2008-0561-MLM-E; IDENTIFIER: RN103961702; LOCATION: Junction, Kimble County; TYPE OF FACILITY: dry cleaning; RULE VIOLATED: 30 Texas Administrative Code (TAC) §337.20(e)(3)(A), by failing to install a dike or other secondary containment structure around each dry cleaning unit and around each storage area for dry cleaning solvents, dry cleaning waste, or dry cleaning wastewater; and 30 TAC §335.4(3), by failing to handle industrial waste in such a manner as to prevent the endangerment of public health and welfare; PENALTY: \$4,750; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(2) COMPANY: BASF FINA Petrochemicals Limited Partnership; DOCKET NUMBER: 2008-0575-AIR-E; IDENTIFIER: RN100216977; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F), 116.115(c), and 122.143(4), New Source Review (NSR) Permit Numbers 36644, PSD-TX-903, and N-007, Special Condition (SC) Number 1, Federal Operating Permit (FOP) Number O-02551, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 12, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the hourly maximum allowable emission rate (MAER) for carbon monoxide (CO); 30 TAC §§101.20(3), 116.115(b)(2)(F), 116.115(c), and 122.143(4), NSR Permit Numbers 36644, PSD-TX-903, and N-007, SC Number 1, FOP Number O-02551, GTC and STC Number 12, and THSC, §382.085(b), by failing to comply with the MAER for CO; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 36644, PSD-TX-903 and N-007, SC Number 21, FOP Number O-02551, GTC and STC Number 12, and THSC,

§382.085(b), by failing to not exceed the maximum firing rate of 0.011 pounds per million British thermal units for CO; 30 TAC §§101.20(3), 116.115(b)(2)(F), 116.115(c), and 122.143(4), NSR Permit Numbers 36644, PSD-TX-903 and N-007, SC Number 1, FOP Number O-02551, GTC and STC Number 12, and THSC, §382.085(b), by failing to maintain the ground flare volatile organic compound emission rate below annual cap; 30 TAC §§101.20(1) and (3), 116.115(c), and 122.143(4), 40 Code of Federal Regulations (CFR) §60.662(a), NSR Permit Numbers 36644, PSD-TX-903, and N-007, SC Number 20, FOP Number O-02551, GTC, STC Numbers 1A and 12, and THSC, §382.085(b), by failing to send the spent caustic and the corrugated plate interceptor/induced gas flotation (CPI/IGF) streams to the carbon adsorption system during periods that the thermal oxidizer was not operating; 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), NSR Permit Numbers 36644, PSD-TX-903, and N-007, SC Number 1, FOP Number O-02551, GTC and STC Number 12, and THSC, §382.085(b), by failing to comply with the hourly MAER for sulfur dioxide (SO₂); 30 TAC §§101.20(2) and (3), 116.115(c), and 122.143(4), 40 CFR §61.355(a)(1)(i), (a)(4)(i), and (c)(1), NSR Permit Numbers 36644, PSD-TX-903, and N-007, SC Number 6, FOP Number O-02551, GTC, STC Numbers 1A and 12, and THSC, §382.085(b), by failing to determine the total annual benzene quantity for 18 separate waste streams; 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), NSR Permit Numbers 36644, PSD-TX-903, and N-007, SC Number 1, FOP Number O-02551, GTC and STC Number 12, and THSC, §382.085(b), by failing to comply with the CO MAER; and 30 TAC §§101.20(1) and (3), 116.115(c), and 122.143(4), 40 CFR §60.662(a), NSR Permit Numbers 36644, PSD-TX-903, and N-007, SC Number 20, FOP Number O-02551, GTC, STC Numbers 1A and 12, and THSC, §382.085(b), by failing to send the spent caustic and the CPI/IGF streams to the carbon adsorption system; PENALTY: \$250,753; Supplemental Environmental Project (SEP) offset amount of \$100,301 applied to South East Texas Regional Planning Commission - West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: Butler Water Supply Corporation; DOCKET NUMBER: 2008-0601-PWS-E; IDENTIFIER: RN101438893; LOCATION: Freestone County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(i), TCEQ Agreed Order Docket Number 2004-0628-PWS-E, Ordering Provision Number 2.d., and THSC, §341.0315(c), by failing to provide two or more wells having a total capacity of 0.6 gallons per million (gpm) per connection; 30 TAC §290.46(m)(1)(A), by failing to inspect the system's ground and elevated storage tanks annually; 30 TAC §290.46(m)(1)(B), by failing to inspect the system's pressure tanks annually; 30 TAC §290.46(s)(1), by failing to calibrate well meters at least once every three years; 30 TAC §290.41(c)(3)(O) and §290.43(e), by failing to provide an intruder-resistant fence; 30 TAC §290.110(b)(4) and §290.46(d)(2)(B) and THSC, §341.0315(c), by failing to operate the disinfection equipment to maintain a minimum disinfectant residual of 0.2 milligrams per liter (mg/L) of free chlorine; 30 TAC §290.46(e)(4)(B) and THSC, §341.033(a), by failing to operate the system under the direct supervision of a water works operator who holds a Class "C" or higher license; 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide an elevated storage tank capacity of 100 gallons per connection; and 30 TAC §290.41(c)(3)(B), by failing to provide a well casing that extends a minimum of 18 inches above the natural ground surface; PENALTY: \$5,163; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096;

REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: E. I. du Pont de Nemours and Company; DOCKET NUMBER: 2008-0499-AIR-E; IDENTIFIER: RN100542711; LOCATION: Orange, Orange County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), NSR Permit Number 9176, SC 1, and FOP O-02001, GTC and SC 8, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$13,350; ENFORCEMENT COORDINATOR: Aaron Houston, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2008-0564-AIR-E; IDENTIFIER: RN100210574; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 4634B, SC Number 1, Standard Permit Registration Number 81006, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$7,375; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: City of Gordon; DOCKET NUMBER: 2008-0606-PWS-E; IDENTIFIER: RN101406957; LOCATION: Gordon, Palo Pinto County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) for total trihalomethanes; and 30 TAC §290.113(f)(5) and THSC, §341.0315(c), by failing to comply with the MCL for haloacetic acids; PENALTY: \$725; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Harris County Fresh Water Supply District 1A; DOCKET NUMBER: 2008-0502-WQ-E; IDENTIFIER: RN101515971; LOCATION: Baytown, Harris County; TYPE OF FACILITY: collection system; RULE VIOLATED: the Code, §26.121(a)(2), by failing to prevent the unauthorized discharge of wastewater; the Code, §26.039(b), by failing to submit noncompliance notification for the unauthorized discharge of wastewater; and 30 TAC §317.3(b)(1), by failing to properly operate and maintain the lift station pumps; PENALTY: \$3,150; SEP offset amount of \$2,520 applied to Armand Bayou Nature Center Coastal Tall Grass Management-Prescribed Burn Program and Prairie Restoration Project; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: J. Cleo Thompson Investment Management, LLC; DOCKET NUMBER: 2008-0420-AIR-E; IDENTIFIER: RN100224385; LOCATION: Ozona, Crockett County; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §122.146(1) and (2) and THSC, §382.085(b), by failing to certify compliance with General Operating Permit Number O-00371; PENALTY: \$3,625; ENFORCEMENT COORDINATOR: Sidney Wheeler, (512) 239-4969; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(9) COMPANY: City of Kirvin; DOCKET NUMBER: 2008-0528-PWS-E; IDENTIFIER: RN101408953; LOCATION: Kirvin, Freestone County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(i), TCEQ Agreed Order Docket Number 2004-1100-PWS-E, Ordering Provision 2.d., and THSC, §341.0315(c), by failing to provide a minimum capacity of 0.6 gpm per connection; 30 TAC §290.46(m)(4), by failing to maintain the service pump discharge line in a watertight condition;

30 TAC §290.46(f)(2) and (3)(E)(iv), by failing to maintain all customer service inspection certificates; 30 TAC §290.42(1), by failing to provide a thorough and up-to-date plant operations manual; 30 TAC §290.46(s)(1), by failing to calibrate the well meter; 30 TAC §290.41(c)(1)(F), by failing to have a sanitary control easement that covers the land within 150 feet of well; 30 TAC §290.46(m)(1)(B), by failing to inspect the interior of the facility's two pressure tanks; and 30 TAC §290.46(n)(3), by failing to maintain the well completion data; PENALTY: \$3,114; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: City of La Feria; DOCKET NUMBER: 2008-0412-PWS-E; IDENTIFIER: RN101418325; LOCATION: La Feria, Cameron County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.42(m), by failing to ensure that each water treatment plant and all appurtenances are enclosed by an intruder-resistant fence; 30 TAC §290.46(s)(1), by failing to calibrate flow measuring devices and rate-of-flow controllers; 30 TAC §290.42(d)(5), by failing to provide additional metering devices to monitor the flow rate through specific treatment processes; 30 TAC §290.42(f)(1)(E)(ii)(IV), by failing ensure incompatible chemicals are not stored within the same containment structure; 30 TAC §290.43(c), by failing to ensure that all facilities for potable water storage are covered, designed, fabricated, erected, tested, and disinfected in strict accordance with current American Water Works Association standards; and 30 TAC §290.46(d) and §290.110(b)(4), by failing to maintain a minimum disinfectant residual of at least 0.5 mg/L total chlorine; PENALTY: \$1,782; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(11) COMPANY: Lake Whitney Resorts, LLC and Paul S. Bissing; DOCKET NUMBER: 2008-0440-MLM-E; IDENTIFIER: RN102131034; LOCATION: Hill County; TYPE OF FACILITY: on-site sewage facility at a recreational vehicle park; RULE VIOLATED: 30 TAC §305.42(a) and the Code, §26.121(a), by failing to obtain proper authorization for the treatment and disposal of domestic wastewater; the Code, §26.121(a), by failing to prevent the unauthorized discharge of wastewater; and 30 TAC §330.15(a), by failing to properly dispose of municipal solid waste; PENALTY: \$14,375; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: LoneStar Fiberglass Pools, LLC; DOCKET NUMBER: 2008-0859-AIR-E; IDENTIFIER: RN104314273; LOCATION: Kingsbury, Guadalupe County; TYPE OF FACILITY: fiberglass swimming pool manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), FOP Number O-02808, GTC, and THSC, §382.085(b), by failing to submit an annual compliance certification; PENALTY: \$2,575; ENFORCEMENT COORDINATOR: Sidney Wheeler, (512) 239-4969; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 77703-1892, (210) 490-3096.

(13) COMPANY: McGuffy Group, Inc.; DOCKET NUMBER: 2008-0552-AIR-E; IDENTIFIER: RN103111571; LOCATION: Cypress, Harris County; TYPE OF FACILITY: small steel parts manufacturing plant; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b), by failing to obtain proper authorization prior to conducting outdoor dry abrasive blasting activities; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Monarch Utilities I L.P.; DOCKET NUMBER: 2007-0047-PWS-E; IDENTIFIER: RN101376986; LOCATION: Grayson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(i) and THSC, §341.0315(c), by failing to meet the minimum well capacity of 0.6 gpm per connection; 30 TAC §290.46(u), by failing to plug and seal abandoned well; and 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; PENALTY: \$1,854; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Montgomery County Municipal Utility District Number 83; DOCKET NUMBER: 2008-0750-MWD-E; IDENTIFIER: RN103993531; LOCATION: Montgomery County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System Permit Number WQ0014482001, Interim I Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with permit effluent limits for total suspended solids and ammonia nitrogen; PENALTY: \$2,300; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Owens Corning Roofing and Asphalt, LLC; DOCKET NUMBER: 2008-0455-AIR-E; IDENTIFIER: RN100225291 and RN100225036; LOCATION: Irving and Houston; Dallas and Harris Counties; TYPE OF FACILITY: roofing and asphalt manufacturing plants; RULE VIOLATED: 30 TAC §122.217(a)(2) and THSC, §382.085(b), by failing to submit a permit revision to FOP Number O-1545; 30 TAC §122.143(4), FOP Number O-1545, SCs 3 and 7, and THSC, §382.085(b), by failing to maintain record of weekly and quarterly visible emissions observations; 30 TAC §101.221(a), Air Permit Number 81011, SC Number 14, and THSC, §382.085(b), by failing to properly maintain and operate capture and control devices at plant one; 30 TAC §101.201(b) and THSC, §382.085(b), by failing to maintain records of the types and quantities of unauthorized emissions; 30 TAC §122.145(2)(B) and (C) and §122.146(5)(C) and THSC, §382.085(b), by failing to report all instances of deviation; and 30 TAC §122.143(4) and §122.146(2), FOP Number O-1543, GTC, and THSC, §382.085(b), by failing to submit an annual permit compliance certification; PENALTY: \$28,055; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800; 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Permian Tank & Manufacturing, Inc.; DOCKET NUMBER: 2008-0433-AIR-E; IDENTIFIER: RN102337730; LOCATION: Odessa, Ector County; TYPE OF FACILITY: storage tank manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), NSR Permit Number 76038, SC 2, and THSC, §382.085(b), by failing to maintain stack observation records; 30 TAC §106.452(2)(A) and §116.115(c) and THSC, §382.085(b), by failing to prevent exceedances of maximum allowed usage rates of 150 tons per year, 15 tons per month, and one ton per day for abrasive blast cleaning operations; 30 TAC §116.115(b)(1), Permit By Rule Number X-16285, and THSC, §382.085(b), by failing to prevent exceedances of the permit limit; and 30 TAC §122.145(2)(B) and THSC, §382.085(b), by failing to submit deviation reports; PENALTY: \$42,500; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(18) COMPANY: Rohm and Haas Texas Incorporated; DOCKET NUMBER: 2008-0156-AIR-E; IDENTIFIER: RN100223205; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.115(c), NSR Permit Number 8838, SC 1, and THSC, §382.085(b), by failing to comply with CO limits; 30 TAC §116.115(c), NSR Permit Number 751, SC 1, and THSC, §382.085(b), by failing to comply with nitrogen oxide hourly maximum limits; 30 TAC §116.115(c), NSR Permit Number 751, SC 6, 40 CFR §60.82(a), and THSC, §382.085(b); by failing to comply with SO₂ production limit; and 30 TAC §116.115(c), NSR Permit Number 751, SC 1, and THSC, §382.085(b), by failing to comply with the SO₂ hourly emissions limit; PENALTY: \$81,000; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: The Golf Club at Circle C, LP; DOCKET NUMBER: 2008-0290-WR-E; IDENTIFIER: RN104337746; LOCATION: Austin, Travis County; TYPE OF FACILITY: golf club; RULE VIOLATED: 30 TAC §297.11 and the Code, §11.121, by failing to obtain a permit to appropriate state water; and the Code, §11.143, by failing to obtain a permit to appropriate state water from an exempt dam or reservoir for nonexempt purposes; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(20) COMPANY: Rodney W. Watkins; DOCKET NUMBER: 2008-0711-WOC-E; IDENTIFIER: RN103595708; LOCATION: Oakwood, Freestone County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a) and §30.381(b), the Code, §37.003, and THSC, §341.034(b), by failing to maintain a valid, effective public water system operator license; PENALTY: \$500; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200803739

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 22, 2008



Enforcement Orders

An agreed order was entered regarding Good Brothers, Inc. dba Zoom In 5, Docket No. 2005-0570-PST-E on July 14, 2008 assessing \$4,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mohinder Mashiana aka Mohinder Singh dba Lovely Food Mart, Docket No. 2005-1478-PST-E on July 14, 2008 assessing \$8,320 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Coleman, Staff Attorney at (817) 588-5917, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Anusha, Inc. dba Citco Food Store, Docket No. 2005-1479-PST-E on July 14, 2008 assessing \$2,140 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert Mosley, Staff Attorney at (512) 239-0627, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City Concrete, Inc., Docket No. 2005-1580-AIR-E on July 14, 2008 assessing \$27,940 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Morgan Michael and Deven Michael dba M & M Tire, Docket No. 2005-1752-MSW-E on July 14, 2008 assessing \$7,875 in administrative penalties with \$4,275 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tempe Water Supply Company, Docket No. 2005-1965-PWS-E on July 14, 2008 assessing \$650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Centurion Pipeline L.P., Docket No. 2006-0984-AIR-E on July 14, 2008 assessing \$7,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney at (817) 588-5927, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Circle K Stores, Inc., Docket No. 2006-1312-AIR-E on July 14, 2008 assessing \$1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mohammad Sadiq Ali dba Dry Cleaning Super Station, Docket No. 2006-1333-DCL-E on July 14, 2008 assessing \$1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Hammer, Staff Attorney at (512) 239-2496, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HAB, Inc. dba New Village Cleaners aka Village Cleaner aka Village Cleaners, Docket No. 2006-1380-DCL-E on July 14, 2008 assessing \$1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Elite Drycleaners, Inc. dba Liberty Cleaners, Docket No. 2006-1450-DCL-E on July 14, 2008 assessing \$1,066 in administrative penalties with \$213 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Dennis Sparks, Docket No. 2006-2066-PST-E on July 14, 2008 assessing \$7,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Corby Hicks, Docket No. 2007-0518-LII-E on July 14, 2008 assessing \$2,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Richard K. Song dba KS Cleaners, Docket No. 2007-0756-MLM-E on July 14, 2008 assessing \$7,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding George Williams, Docket No. 2007-0840-MLM-E on July 14, 2008 assessing \$2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Plano, Docket No. 2007-0889-WQ-E on July 14, 2008 assessing \$27,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Seminole, Docket No. 2007-1059-MWD-E on July 14, 2008 assessing \$4,560 in administrative penalties with \$912 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of New Home, Docket No. 2007-1263-PWS-E on July 14, 2008 assessing \$531 in administrative penalties with \$106 deferred.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alexander Moulding Mill Company, Docket No. 2007-1381-PWS-E on July 14, 2008 assessing \$1,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ben Kahlig, Docket No. 2007-1412-PST-E on July 14, 2008 assessing \$4,750 in administrative penalties with \$950 deferred.

Information concerning any aspect of this order may be obtained by contacting Phillip DeFrancesco, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Buckholts, Docket No. 2007-1569-PWS-E on July 14, 2008 assessing \$1,114 in administrative penalties with \$222 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pottsboro, Docket No. 2007-1594-MWD-E on July 14, 2008 assessing \$194,725 in administrative penalties with \$73,828 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Point, Docket No. 2007-1595-PWS-E on July 14, 2008 assessing \$6,608 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Christopher Keffer, Enforcement Coordinator at (512) 239-5610, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Victor Ballas, Docket No. 2007-1742-PST-E on July 14, 2008 assessing \$8,925 in administrative penalties with \$1,785 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Wichita Falls, Docket No. 2007-1752-MSW-E on July 14, 2008 assessing \$15,100 in administrative penalties with \$3,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Cynthia McKaughan, Enforcement Coordinator at (512) 239-0735, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Santiago Guzman, Jr. and Josephine Guzman dba Guzman Quality Cleaners, Docket No. 2007-1764-DCL-E on July 14, 2008 assessing \$1,152 in administrative penalties with \$230 deferred.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator at (512) 239-2563, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cross Country Water Supply Corporation, Docket No. 2007-1850-PWS-E on July 14, 2008 assessing \$378 in administrative penalties with \$75 deferred.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Post Oak Special Utility District, Docket No. 2007-1851-PWS-E on July 14, 2008 assessing \$668 in administrative penalties with \$134 deferred.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Town of Windom, Docket No. 2007-1855-MWD-E on July 14, 2008 assessing \$9,960 in administrative penalties with \$1,992 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Peachleaf Associates Venture #1, L.P., Docket No. 2007-1863-PWS-E on July 14, 2008 assessing \$2,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Christopher Keffer, Enforcement Coordinator at (512) 239-5610, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eastex Lumber & Supply, LLC, Docket No. 2007-1877-PWS-E on July 14, 2008 assessing \$1,250 in administrative penalties with \$250 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Monarch Utilities I L.P., Docket No. 2007-1897-MWD-E on July 14, 2008 assessing \$35,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3048, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DuPont Performance Elastomers L.L.C., Docket No. 2007-1901-AIR-E on July 14, 2008 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Aaron Houston, Enforcement Coordinator at (409) 899-8784, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Houston Refining LP, Docket No. 2007-1954-AIR-E on July 14, 2008 assessing \$20,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Swati Holding, Company dba Ellinger Shell, Docket No. 2007-1965-PST-E on July 14, 2008 assessing \$7,850 in administrative penalties with \$1,570 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding El Paso Independent School District, Docket No. 2007-1982-AIR-E on July 14, 2008 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Aaron Houston, Enforcement Coordinator at (409) 899-8784, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Daniel R. Harris and D. Patricia Harris dba Desert Hills Car Wash & Convenience Store, Docket No. 2007-1991-AIR-E on July 14, 2008 assessing \$2,400 in administrative penalties with \$480 deferred.

Information concerning any aspect of this order may be obtained by contacting Sidney Wheeler, Enforcement Coordinator at (512) 239-4078, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Archer City, Docket No. 2007-1999-MWD-E on July 14, 2008 assessing \$16,575 in administrative penalties with \$3,315 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HICKS OIL & BUTANE CO., Docket No. 2007-2012-PST-E on July 14, 2008 assessing \$5,500 in administrative penalties with \$1,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rincon Water Supply Corporation, Docket No. 2007-2014-PWS-E on July 14, 2008 assessing \$3,071 in administrative penalties with \$614 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 490-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding National Oilwell Varco, LP, Docket No. 2007-2023-AIR-E on July 14, 2008 assessing \$12,445 in administrative penalties with \$2,489 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825 3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2007-2025-AIR-E on July 14, 2008 assessing \$4,300 in administrative penalties with \$860 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Farmersville Texaco, Inc. dba Farmersville Shell, Docket No. 2007-2038-PST-E on July 14, 2008 assessing \$3,200 in administrative penalties with \$640 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eastman Chemical Company, Docket No. 2007-2040-AIR-E on July 14, 2008 assessing \$13,050 in administrative penalties with \$2,610 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 676-3500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Zee Smoke Inc Lucky Stop, Docket No. 2008-0006-PST-E on July 14, 2008 assessing \$13,770 in administrative penalties with \$2,754 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lattimore Materials Company, L.P., Docket No. 2008-0021-IWD-E on July 14, 2008 assessing \$4,350 in administrative penalties with \$870 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rockdale, Docket No. 2008-0023-MLM-E on July 14, 2008 assessing \$7,022 in administrative penalties with \$1,404 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (210) 490-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Trunkline Gas Company, LLC, Docket No. 2008-0033-AIR-E on July 14, 2008 assessing \$13,800 in administrative penalties with \$2,760 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tapia Brothers, Inc. dba Tapia Dairy #2, Docket No. 2008-0035-AGR-E on July 14, 2008 assessing \$3,689 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. du Pont de Nemours and Company, Docket No. 2008-0037-AIR-E on July 14, 2008 assessing \$3,675 in administrative penalties with \$735 deferred.

Information concerning any aspect of this order may be obtained by contacting Aaron Houston, Enforcement Coordinator at (409) 899-8784, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Petrochemicals LP, Docket No. 2008-0043-AIR-E on July 14, 2008 assessing \$3,600 in administrative penalties with \$720 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Bynum, Docket No. 2008-0045-MWD-E on July 14, 2008 assessing \$1,070 in administrative penalties with \$214 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Goodyear Tire & Rubber Company, Docket No. 2008-0053-IWD-E on July 14, 2008 assessing \$2,140 in administrative penalties with \$428 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Prism Gas Systems I, L.P., Docket No. 2008-0058-AIR-E on July 14, 2008 assessing \$10,320 in administrative penalties with \$2,064 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Randal Paul Manus, Docket No. 2008-0073-WOC-E on July 14, 2008 assessing \$570 in administrative penalties with \$114 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Keffer, Enforcement Coordinator at (512) 239-5610, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Gainesville, Docket No. 2008-0089-WQ-E on July 14, 2008 assessing \$6,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2008-0096-AIR-E on July 14, 2008 assessing \$120,400 in administrative penalties with \$24,080 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Austin, Docket No. 2008-0121-WQ-E on July 14, 2008 assessing \$16,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Fort Worth, Docket No. 2008-0149-MWD-E on July 14, 2008 assessing \$22,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JRS Mart, Inc. dba J C Korner, Docket No. 2008-0159-PWS-E on July 14, 2008 assessing \$784 in administrative penalties with \$156 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TOTAL PETROCHEMICALS USA, INC., Docket No. 2008-0162-AIR-E on July 14, 2008 assessing \$25,764 in administrative penalties with \$5,152 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Allco, Inc., Docket No. 2008-0226-WQ-E on July 14, 2008 assessing \$2,700 in administrative penalties with \$540 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PYCO Industries, Inc., Docket No. 2008-0240-AIR-E on July 14, 2008 assessing \$5,775 in administrative penalties with \$1,155 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ivans Pumping Service, Inc., Docket No. 2008-0244-MLM-E on July 14, 2008 assessing \$950 in administrative penalties with \$190 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Petrochemicals LP, Docket No. 2008-0260-AIR-E on July 14, 2008 assessing \$7,075 in administrative penalties with \$1,415 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INEOS USA LLC, Docket No. 2008-0266-AIR-E on July 14, 2008 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Denton, Docket No. 2008-0284-AIR-E on July 14, 2008 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AMC Facilities, LP, Docket No. 2008-0309-MWD-E on July 14, 2008 assessing \$4,770 in administrative penalties with \$954 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Gutierrez Oil Company dba La Bodega 1, Docket No. 2008-0536-PST-E on July 14, 2008 assessing \$5,250 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding First Texas Homes, Inc., Docket No. 2008-0471-WQ-E on July 14, 2008 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding First Texas Homes, Inc., Docket No. 2008-0459-WQ-E on July 14, 2008 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alegre Energy, Inc., Docket No. 2007-1943-AIR-E on July 2, 2008 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding C. B. Express, Inc., dba Discount Beer & Cigarettes, Docket No. 2006-1661-PST-E on July 14, 2008 assessing \$2,695 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200803772

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 23, 2008



Notice - Extension of Comment Period on the Proposed Amendments to 30 TAC Chapter 330

In the June 20, 2008, issue of the *Texas Register* (33 TexReg 4815), the Texas Commission on Environmental Quality (commission) pub-

lished a notice of proposed amendments to Chapter 330, Municipal Solid Waste. The deadline date for written comments was published as July 21, 2008 in the June 20, 2008, issue of the *Texas Register* (33 TexReg 4924).

The commission has extended the deadline for receipt of written comments to August 8, 2008, for the proposed amendments to Chapter 330.

Comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments>. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2008-013-330-PR. To view rules, please visit http://www.tceq.state.tx.us/nav/rules/propose_adapt.html. For further information or questions concerning this proposal, please contact Wayne Harry, Municipal Solid Waste Permits Section, at (512) 239-6619.

TRD-200803657

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 17, 2008



Notice of District Petition

Notices issued July 15, 2008.

TCEQ Internal Control No. 06202008-D02; Northwest Katy Land Holdings I, LTD and Northwest Katy Land Holdings II, LTD (collectively, the "Petitioner") filed a petition for creation of Harris County Municipal Utility District No. 520 (the "District") with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition was filed with the county clerk in Harris County, pursuant to 30 TAC §293.11(d). The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 505.509 acres located in Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2008-198, effective March 18, 2008, the City of Houston, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately \$64,240,000.

TCEQ Internal Control No. 05092008-D03; Northwest Katy Land Holdings I, LTD and Northwest Katy Land Holdings II, LTD (collectively, the "Petitioner") filed a petition for creation of Harris County Municipal Utility District No. 519 (the "District") with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition was filed with the county clerk in Harris County, pursuant to 30 TAC §293.11(d). The petition states the following: (1) the Peti-

tioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 466.693 acres located in Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2008-197, effective March 18, 2008, the City of Houston, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately \$54,280,000.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing;" (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200803771

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 23, 2008



Notice of Water Rights Application

Notice issued July 18, 2008.

APPLICATION NO. 12256; WB Land Company Ltd., Applicant, 139 Private Road 214, Whitney, TX 76692, has applied for a Water Use Permit to divert and use not to exceed 840 acre-feet of water per year from the Brazos River, Brazos River Basin for industrial (dust suppres-

sion) purposes and to store in and subsequently divert that water from four off-channel reservoirs for agricultural (irrigation) purposes in Hill County. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on September 14, 2007. Additional information and fees were received on December 12, 2007 and March 26, 2008. The application was declared administratively complete and filed with the Office of the Chief Clerk on April 3, 2008. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200803770

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 23, 2008



Notice of Water Quality Applications

The following notices were issued during the period of July 10, 2008 through July 21, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN

30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

AMC FACILITIES, LP has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014882001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0012238001, which expired December 01, 2007. The facility is located adjacent to and on the east side of Hardy Road, approximately 1000 feet south of the intersection of Hardy Road and Richey Road in Harris County, Texas.

AUC GROUP, L.P. has applied for a renewal of TPDES Permit No. WQ0014551001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located approximately 10,200 feet west south-west of the intersection of Farm-to-Market Road 149 and Farm-to-Market Road 1488 in Montgomery County, Texas.

CITY PUBLIC SERVICE OF SAN ANTONIO which operates the V.H. Braunig Steam Electric Station, has applied for a major amendment to TPDES Permit No. WQ0001515000 to authorize an increase in the discharge of once-through cooling water, previously monitored effluents (PME), and storm water runoff from a daily average flow not to exceed 1,220,000,000 gallons per day to a daily average flow not to exceed 1,320,000,000 gallons per day via Outfall 001; discharge of low volume waste and storm water runoff on an intermittent and flow variable basis via Outfall 007, and the increase in the upper pH limits from 9.0 to 10.0 standard units at Outfall 007. The current permit authorizes the discharge of once-through cooling water, previously monitored effluents (PME) (low volume waste, metal cleaning waste, treated domestic wastewater, and storm water runoff at a daily average flow not to exceed 1,220,000,000 gallons per day via Outfall 001; storm water runoff on intermittent and flow variable basis via Outfalls 003, 006, 007, 008, 011, 013, and 015; and storm water runoff and car wash water on an intermittent and flow variable basis via Outfall 012. The facility is located at 15290 Streich Road, approximately two miles east of Interstate Highway 37 South, adjacent to Braunig Lake, approximately 2.75 miles northwest of the City of Elmendorf and 17 miles southeast of the City of San Antonio, Bexar County, Texas.

COUNTRY TERRACE WATER COMPANY, INC. has applied for a renewal of TPDES Permit No. WQ0011955001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 490,000 gallons per day. The facility is located approximately 600 feet south of Highlands Reservoir, approximately 0.75 mile northwest of the intersection of Wallisville and Wade Roads in Harris County, Texas.

EXXONMOBIL OIL CORPORATION which operates the Beaumont Polyethylene Plant which manufactures low density and high density polyethylene (LDPE and HDPE) pellets and resins shipped via railroad hopper cars, has applied for a major amendment to TPDES Permit No. WQ0002029000 to increase the daily average flow from a volume not to exceed 600,000 gallons per day to a volume not to exceed 1,000,000 gallons per day via internal Outfall 101 and apply recalculated single grab concentration values at internal Outfall 101. The current permit authorizes the discharge of storm water and previously monitored effluent (from internal Outfall 101) on a flow variable basis via Outfall 001; and treated process, utility (includes but is not limited to steam condensate, cooling tower blowdown, and demineralization water), and domestic wastewaters at a daily average flow not to exceed 600,000 gallons per day via internal Outfall 101. The facility is located at 11,440 U.S. Highway 90, on the north side of U.S. Highway 90, and approxi-

mately 2.5 miles west of the intersection of U.S. Highway 90 and Major Drive, west of the City of Beaumont, Jefferson County, Texas.

GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 12 has applied for a renewal of TPDES Permit No. WQ0010435002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located at Pompano Road and Neptune Road within the Bayou Vista Subdivision, 0.3 mile south and 1.0 mile west of the intersection of Interstate Highway 45 and State Highway 6 in Galveston County, Texas.

GALVESTON COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 8 has applied for a renewal of TPDES Permit No. WQ0010174001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located on the north side of 11th Street, approximately 0.75 miles east of the intersection of 11th Street and Farm-to-Market Road 646 in the City of Santa Fe in Galveston County, Texas.

CITY OF GARLAND has applied for a renewal of TPDES Permit No. WQ0010090001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 40,000,000 gallons per day. The facility is located at 750 Duck Creek Way, south of Lake Ray Hubbard Dam and north of Interstate Highway 20 near the Town of Sunnyvale in Kaufman County, Texas.

THE CITY OF GONZALES has applied for renewal of Permit No. WQ0004467000 to authorize the land application of wastewater treatment plant sewage sludge for beneficial use on 45.4 acres. The land application site is located on the north side of County Road 488, approximately 0.2 mile north of the intersection of County Road 488 and Farm-to-Market Road 532, approximately 2.5 miles northeast of the City of Gonzales in Gonzales County, Texas.

The City of League City has applied for a renewal of TPDES Permit No. WQ0010568003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 660,000 gallons per day. The facility is located on the western bank of Magnolia Creek; approximately 1,200 feet south of Clear Creek, approximately 2,200 feet north of Farm-to-Market Road 518 and approximately 3 miles west of Interstate Highway 45 in Galveston County, Texas.

MANVEL UTILITIES LIMITED PARTNERSHIP has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0014188001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility is located at 5825 Croix Road, approximately 0.75 mile northwest of the intersection of Del Bello Road and County Road 90 in Manvel, Brazoria County, Texas.

MASON WESTGREEN LP has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014896001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility will be located approximately 1.2 miles south of the intersection of Highway 290 and Mason Road in Harris County, Texas.

NORTH TEXAS MUNICIPAL WATER DISTRICT has applied for a renewal of TPDES Permit No. WQ0010384001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located at 806 Alanis Drive, approximately 0.4 mile southeast of State Highway 78, approximately 0.57 mile south of the crossing of Muddy Creek by State Highway 78, and 1.25 miles southwest of the City of Wylie central business district in Collin County, Texas.

ORBIT SYSTEMS, INC. has applied for a renewal of TPDES Permit No. WQ0012672001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 70,000 gallons per day. The facility is located approximately 0.50 mile south of Farm-to-Market Road 1462 and 1.5 miles west of State Highway 288 in Brazoria County, Texas.

CITY OF PEARLAND has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0010134002 to authorize the modification of the peaking factor between the annual average flow and the two-hour peak flow, thus changing the two-hour peak flow from 6,431 gallons per minute to 8,681 gallons per minute in the interim phase and from 9,375 gallons per minute to 12,500 gallons per minute in the final phase. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,500,000 gallons per day. The facility is located at 1902 1/2 Barry Rose Street, immediately west of Clear Creek and approximately 7,000 feet north of Farm-to-Market Road 518 in Brazoria County, Texas.

CITY OF POINT COMFORT has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0010599001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located at 800 Pease Street, at the intersection of Murrah Street and Pease Street, approximately 2,900 feet northwest of the intersection of Farm-to-Market Road 1593 and State Highway 35 in Calhoun County, Texas.

CITY OF RIESEL has applied for a renewal of Permit No. WQ0011015001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day via surface irrigation of 45 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 0.5 mile west of State Highway 6 on West Charles Street and on the east bank of West Sandy Creek in the City of Riesel in McLennan County, Texas.

CITY OF SKELLYTOWN has applied for a renewal of TPDES Permit No. WQ0010283001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility is located approximately 0.25 mile west of State Highway 152 at a point approximately 1.0 mile northwest of the intersection of Farm-to-Market Road 294 and State Highway 152 in Carson County, Texas.

TERRA RENEWAL SERVICES, INC. has applied for a major amendment with renewal to Permit No. WQ0004513000 to authorize water treatment plant sludge as an additional waste to be land applied and to increase the application area acreage from 80 acres to 185.8 acres. The land application site is located adjacent to the east side of Farm-to-Market Road 2087, approximately 1.6 miles south of the intersection of Farm-to-Market Road 1845 and Farm-to-Market Road 2087 in Gregg County, Texas.

TOSCANA INVESTMENTS, LLLP has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014881001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility will be located in the northeast portion of the Aperion development tract, just south of South Hayes Creek, and approximately two miles east of the intersection of State Highway 288 and County Road 60 in Brazoria County, Texas.

U.S. ARMY CORPS OF ENGINEERS has applied for a renewal of TPDES Permit No. WQ0012059001, which authorizes the discharge

of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility is located in Mallard Park on the east side of Lavon Lake northwest of the intersection of State Highway 78 and Farm-to-Market Road 6 in Collin County, Texas.

WOODCREEK MUNICIPAL UTILITY DISTRICT has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0011933001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 600,000 gallons per day to a daily average flow not to exceed 950,000 gallons per day. The facility is located approximately 3,400 feet southeast of the intersection of Aldine-Westfield Road and Farm-to-Market Road 1960, on the south side of Turkey Creek in Harris County, Texas.

Concentrated Animal Feeding Operation

The following require the applicants to publish notice in a newspaper. Written comments and requests for a public meeting may be submitted to the Office of the Chief Clerk, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

Consideration of the application by COTTONWOOD AUCTION BARN, L.L.C. for renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ00004136000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to operate an existing auction barn facility at a maximum capacity of 1,800 head. The facility is located on the south side of State Highway 6 approximately four and two tenths (4.2) miles east of the intersection of Farm-to-Market Road 219 and State Highway 6 in Dublin, Erath County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200803769

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 23, 2008

Texas Health and Human Services Commission

Correction of Error

There is a typographical error in the Public Notice regarding the Texas Health and Human Services Commission's intent to submit an amendment to the Texas State Plan for Medical Assistance. The Amendment and Transmittal numbers in the public notice, which was originally published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 2068), should have been Amendment 809 and Transmittal Number TX 08-005.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Jim Hollinger, Rate Analyst, Rate Analysis Department, by mail at the Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1175; by facsimile at (512) 491-1998; or by e-mail at james.hollinger@hhsc.state.tx.us.

TRD-200803725



Notice of Intent to Renew Consultant Contract

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) furnish this notice of intent to renew a consultant contract.

HHSC issued the Request for Proposals (RFP) from qualified consultants to procure technical expertise to assist in the strategic development, implementation, and evaluation of a Texas healthy marriage initiative pursuant to this RFP. The original notice of request for proposals (RFP #529-05-0115A) was posted on HHSC's Business Opportunities Page under HHSC Contracting Opportunities link at http://www.hhsc.state.tx.us/about_hhsc/BusOpp/BO_opportunities.html. HHSC also posted notice of the procurement on the Texas Marketplace on June 22, 2005.

The contract was awarded to Public Strategies, Inc., 301 Northwest 63rd Street, Suite 600, Oklahoma City, Oklahoma 73116. Notice of the award of the original contract was posted on HHSC's Business Opportunities Page under HHSC Contracting Opportunities link on August 15, 2005. The original contract included options to extend the contract as necessary and HHSC intends to exercise this option.

HHSC intends to extend the contract through August 31, 2009, and to increase the amount by \$1,350,000 for a Total Amount of \$3,650,000.00 unless they receive a better offer for the desired services. Any consultant submitting an offer in response to this Invitation must provide the following:

1. Consultant's legal name, including type of entity (individual, partnership, corporation, etc.), and address;
 2. Background information regarding the consultant, including the number of years in business and the number of employees;
 3. Information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services;
 4. The hourly rate to be charged for each team member providing services;
 5. The earliest date by which the consultant could begin providing the services;
 6. A list of five client references for which consultant has provided consulting services;
 7. A statement of consultant's approach to the project (i.e., the services described in this notice), any unique benefits consultant offers HHSC, and any other information consultant desires HHSC to consider in connection with consultant's offer;
 8. Information to assist HHSC in assessing consultant's demonstrated competence and experience providing consulting services similar to the services requested in this notice;
 9. Information to assist HHSC in assessing the consultant's knowledge of and experience with research related to marriage across a wide array of audiences, and have demonstrated expertise in promoting and/or implementing public marriage policy for state government(s). http://www.hhsc.state.tx.us/about_hhsc/Contracting/rfp_attn/attn.html
- a. Child Support Certification;

- b. Debarment, Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts;
- c. Federal Lobbying Certification;
- d. Nondisclosure Statement;
- e. Proposer Information; and
- f. HUB Subcontracting Plan Forms (Pre-Award). To search for potential HUB vendors who may perform subcontracting opportunities, respondents may refer to the Texas Building and Procurement Commission's Centralized Master Bidders List HUB Directory, which is found at <http://www2.cpa.state.tx.us/cmbl/cmblhub.html>. Class and item codes for potential subcontracting opportunities under this notice, include, but are not limited to: Class 918 -- "Consulting Services;" Item 58 -- "Governmental Consulting".

Failure to submit the required forms will result in HHSC's disqualification of the offer.

10. Information to assist HHSC in assessing whether the consultant will have any conflicts of interest in performing the requested services.

Competing offers must be sent to Connie Williams, Health and Human Services Commission, 909 West 45th St., Bldg. 5, Austin, Texas 78751. To be considered, all competing offers must be received at the foregoing address on or before 4:00 p.m. Central Time on August 15, 2008. Offers received after this time and date will not be considered. Any offers received will be evaluated on the basis of demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services. Exercise of this option to extend is contingent upon receipt of a finding of fact from the Governor's Office of Budget and Planning that the requested consulting services are necessary. All questions regarding this notice must be sent in writing to Ms. Williams at the address stated above, or by email to connie.williams@hhsc.state.tx.us by 4:00 p.m. Central Time on August 15, 2008.

TRD-200803755
David Brown
Assistant General Counsel
Texas Health and Human Services Commission
Filed: July 23, 2008



Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 18, 2008, at 1:30 p.m. to receive public comment on the proposed increase in Medicaid payment rates for 2 surgery medical service procedure codes (42700 and 69461) related to surgery medical services. HHSC is proposing these rate changes following a scheduled rate review.

The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1438, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. The payment rates to be discussed are proposed to be effective September 1, 2008.

Methodology and Justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners, including surgery and assistant surgery services. 1 TAC §355.8085 requires HHSC to review the fees for individual services at least every two years.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after August 4, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1438; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200803744

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: July 22, 2008



Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 18, 2008, at 1:30 p.m., to receive public comment on a proposed increase in the Medicaid payment rate for medical services procedure code 59514, related to cesarean delivery services. The proposed rate increase was directed by the Office of the Medical Director to correct a coding error.

The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1438, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. The rates to be discussed are proposed to be effective September 1, 2008.

Methodology and Justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners, including surgery and assistant surgery services. 1 TAC §355.8085 requires HHSC to review the fees for individual services at least every two years.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after August 1, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1438; by fax

at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200803745

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: July 22, 2008



Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 18, 2008, at 1:30 p.m., to receive public comment on a proposed Medicaid payment rate increase for the cochlear implant device, which is an item of durable medical equipment (DME). The rate change is associated with a fee review directed by the Office of the Medical Director.

The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements.

Proposal. The rate for the Cochlear Implant Device procedure code will have a proposed effective date of September 1, 2008.

Methodology and Justification. The proposed payment rate was calculated in accordance with 1 TAC §355.8021, which addresses the Reimbursement Rates for Home Health Services; and 1 TAC §355.8441(3), relating to the Reimbursement Methodology for Durable Medical Equipment under the Early and Periodic, Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as THSteps).

Briefing Package. A briefing package describing the proposed payment rate will be available on or after August 4, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1438; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rate may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400,

Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

People with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Kimbra Rawlings at (512) 491-1438 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200803746

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: July 22, 2008



Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on August 18, 2008, at 1:30 p.m., to receive public comment on the proposed increase in the Medicaid payment rates for Breast Brachytherapy. The changes are associated with a fee review for these Medicaid medical services.

The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. The rates for Breast Brachytherapy are proposed to be effective September 1, 2008.

Methodology and Justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners, including surgery and assistant surgery services.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after August 4, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1438; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Irene Cantu, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1438; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

People with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Kimbra Rawlings at (512) 491-1438 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200803747

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: July 22, 2008



Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on August 18, 2008, at 1:30 p.m., to receive public comment on the proposed Medicaid payment rates for five new THSteps Therapeutic Dental Services procedure codes. The proposed Medicaid fees for the five dental procedure codes were determined in accordance with the reimbursement methodology outlined in 1 Texas Administrative Code (TAC) §355.8441(11), which addresses the reimbursement methodology for dental services under the Early and Periodic, Screening, Diagnosis, and Treatment (EPSDT) Program, known in Texas as THSteps.

The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 TAC §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1438, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. The rates for the THSteps Therapeutic Dental Services are proposed to be effective September 1, 2008.

Methodology and Justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners and 1 TAC §355.8441(11), relating to the reimbursement methodology for dental services to Medicaid clients under age 21.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after August 4, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1438; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Irene Cantu, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1438; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

People with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Kimbra Rawlings at (512) 491-1438 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200803748

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: July 22, 2008



Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on August 18, 2008, at 1:30 p.m., to receive public comment on the proposed Medicaid payment rates for 2 new dental varnish services provided in a Physician's Office. Dental varnish services will be delivered by physicians in the physician's office. Currently, dental varnish services are only reimbursable to dentists.

The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1438, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. The rates for Dental Varnish service in the Physician Offices are proposed to be effective September 1, 2008.

Methodology and Justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners and 1 TAC §355.8441(11), relating to the reimbursement methodology for dental services to Medicaid clients under age 21.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after August 4, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1438; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Irene Cantu, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1438; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

People with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Kimbra Rawlings at (512) 491-1438 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200803754
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: July 23, 2008



Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on August 18, 2008, at 1:30 p.m., to receive public comment on 2 new procedure codes (1 for surgery and 1 for durable medical equipment) for the proposed Medicaid payment rates for Gynecological and Reproductive Health Services.

The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements.

Proposal. The rates for the procedure codes for Gynecological and Reproductive Health Services are proposed to be effective September 1, 2008.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC §355.8085, which addresses the Texas Medicaid Reimbursement Methodology for physicians and certain other practitioners; 1 TAC §355.8021, which addresses the Reimbursement Rates for Home Health Services; and 1 TAC §355.8441(3), relating to the Reimbursement Methodology for Durable Medical Equipment under the Early and Periodic, Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as THSteps).

Briefing Package. A briefing package describing the proposed payment rates will be available on or after August 4, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1438; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

People with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Kimbra Rawlings at (512) 491-1438 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200803760
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: July 23, 2008



Texas Department of Housing and Community Affairs

Single Family Mortgage Revenue Bonds (Program 71) and
Single Family Mortgage Revenue Bonds Drawdown Program

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at 221 East 11th Street, Room 116, Austin, Texas, at 12:00 noon on September 2, 2008, with respect to the following (i) an issue of tax-exempt single family mortgage revenue bonds to be issued in one or more series in an aggregate face amount of not more than \$129,600,000 (the "Program 71 Bonds") and (ii) a plan of financing (the "Plan") that includes issues of tax-exempt single family mortgage revenue bonds (the "Drawdown Bonds"), the first of which is to be issued within one year of the date of the hearing described below and the last of which is to be issued no later than three years from the first delivery of Drawdown Bonds under the Plan.

The proceeds of the Program 71 Bonds will be used directly to make single family residential mortgage loans. All of such single family residential mortgage loans will be made to eligible very low, low and moderate income homebuyers for the purchase of homes located within the State of Texas, and are expected to be in an aggregate estimated amount of \$129,600,000.

The Drawdown Bonds will be issued by the Department in one or more series or subseries, in a maximum aggregate face amount not to exceed \$400,000,000. The proceeds of the Drawdown Bonds will be used for the following purposes: (a) to refund certain single family mortgage revenue bonds of the Department and thereby to recycle prepayments and repayments of loans made with the proceeds of such bonds in order to provide single family residential mortgage loans; (b) to refund certain single family mortgage revenue bonds of the Department and thereby to recycle unexpended proceeds of such bonds in order to provide single family residential mortgage loans; and (c) to provide, directly or indirectly, single family residential mortgage loans. All of such single family residential mortgage loans will be made to eligible very low, low and moderate income homebuyers for the purchase of homes located within the State of Texas.

For purposes of the Department's mortgage loan finance programs, eligible borrowers generally will include individuals and families whose family income does not exceed, (i) for families of three or more persons, 115% (140% in certain targeted areas) of the area median income, and (ii) for individuals and families of two persons, 100% (120% in certain targeted areas) of the area median income, who have not owned a principal residence during the preceding three years (except in certain cases permitted under applicable provisions of the Internal Revenue Code). Further, residences financed with loans under the programs generally will be subject to certain other limitations, including limits on the purchase prices of the residences being acquired. All the limitations described in this paragraph are subject to revision and adjustment from time to time by the Department pursuant to changes in applicable federal law and Department policy.

All interested parties are invited to attend such public hearing to express their views with respect to the Department's mortgage loan finance program and the issuance of the Program 71 Bonds and the Drawdown Bonds. Questions or requests for additional information may be directed to Heather Hodnett at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701; telephone (512) 475-1899.

Persons who intend to appear at the hearing and express their views are invited to contact Heather Hodnett in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Heather Hodnett prior to the date scheduled for the hearing.

TDHCA WEBSITE: www.tdhca.state.tx.us/hf.htm

Individuals who require auxiliary aids for the hearing should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943, or Re-

lay Texas at 1-800-735-2989 at least two days before the hearing so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for the hearing should contact Heather Hodnett at (512) 475-1899 at least three days before the hearing so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

This notice is published and the above-described hearing is to be held in satisfaction of the requirements of State law and Section 147(f) of the Internal Revenue Code of 1986, as amended, regarding the public approval prerequisite to the exclusion from gross income for federal income tax purposes of interest on the Program 71 Bonds and the Drawdown Bonds.

TRD-200803663

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: July 18, 2008

Texas Department of Insurance

Company Licensing

Application to change the name of UNITED FAMILY LIFE INSURANCE COMPANY to IA AMERICAN LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Scottsdale, Arizona.

Application to change the name of AXA LIFE AND ANNUITY COMPANY to AXA EQUITABLE LIFE AND ANNUITY COMPANY, a foreign life, accident and/or health company. The home office is in Denver, Colorado.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohachesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200803765

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: July 23, 2008

Notice of Public Hearing 2008 Texas Title Insurance Biennial Hearing

Notice is hereby given that a title insurance hearing will be held before the Commissioner of Insurance. The hearing will consist of a rulemaking phase and a ratemaking phase. The rulemaking phase, under Docket No. 2690, will be for the consideration of rules, forms, and endorsements, and related matters not having primary rate implications. The ratemaking phase, under Docket No. 2691, will be for the consideration of fixing the premium rate and other matters with direct rate implications. The scope of the hearing includes subjects and matters related to both real property title insurance and personal property title insurance. The hearing for the rulemaking phase will begin at 9:30 a.m., in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, on October 2, 2008, and continue thereafter at dates, times, and places designated by the Commissioner until conclusion. The hearing for the ratemaking phase will begin at 9:30 a.m., in Room 100 of the William P. Hobby, Jr. State Of-

Office Building, 333 Guadalupe Street in Austin, Texas, on November 18, 2008, and continue thereafter at dates, times, and places designated by the Commissioner until conclusion. The Commissioner may conduct both phases of the hearing; however, the ratemaking phase of the hearing can be conducted by the State Office of Administrative Hearings in accordance with Chapter 40, Texas Insurance Code at the direction of the Commissioner or at the written request of any person seeking admission as a party to the ratemaking phase of the hearing pursuant to Chapter 2703. The Commissioner shall certify which matters have rate implications to be considered in the ratemaking phase of the hearing.

Authority, Jurisdiction, Statutes and Rules Involved

The Commissioner has jurisdiction over the promulgation of rules and premium rates, over amendments to or promulgation of approved forms, and over other matters set out in this notice pursuant to Texas Insurance Code, Sections 31.021 and 2551.003, Chapters 2501, 2703, 2751 and pursuant to the Texas Administrative Code, Title 28, Chapter 9. The procedure of the hearing will be governed by the Rules of Practice and Procedure before the Department of Insurance (Texas Administrative Code, Title 28, Chapter 1, Subchapter A) and the Administrative Procedure Act (Texas Government Code, Chapter 2001).

Matters to be Considered

The Commissioner will consider testimony presented and information filed by title insurers, title agents, the Texas Department of Insurance staff, and other interested parties relating to the following issues:

Docket No. 2690

Form and Rulemaking Phase

Item 2008-1 - Submission by Texas Land Title Association to amend the Residential Real Property Affidavit (Form T-47) to remove a duplicate reference to the title insurance company in paragraph 6 of the form.

Item 2008-2 - Submission by Texas Land Title Association to amend Procedural Rule P-36 to allow for the deletion of the arbitration provision on Schedule A of the Loan Policy or the Owner's Policy and to amend outmoded references relating to the Mortgagee and Owner Policy forms.

Item 2008-3 - Submission by Texas Land Title Association to amend Procedural Rule P-21 to conform the language of the rule with the language of the form by amending outmoded references relating to the Mortgagee and Owner Policy forms and to amend an outmoded reference to the State Board of Insurance.

Item 2008-4 - Submission by Texas Land Title Association to amend Procedural Rule P-9.b(8) to conform the language of the rule with the proposed Future Advance/Revolving Credit Form (T-35) and to delete the requirement that the Loan Policy show by endorsement that the lien being insured secures a revolving credit type of indebtedness.

Item 2008-5 - Submission by Texas Land Title Association to amend Procedural Rule P-9.b(6) to conform the language of the rule with the language of the Variable Rate Mortgage Endorsement (T-33) and the Variable Rate Mortgage-Negative Amortization Endorsement (T-33.1).

Item 2008-6 - Submission by Texas Land Title Association to adopt a new procedural rule (P-___) to provide that the proposed Texas Limited Coverage Residential Chain of Title Policy (T-___) shall not be issued with respect to deeds and leases recorded in the public records more than sixty months immediately preceding the Date of Policy and to clarify the term "institutional lender."

Item 2008-7 - Submission by Texas Land Title Association to adopt a new Texas Limited Coverage Residential Chain of Title Policy (Form T-___) to respond to mortgage fraud concerns raised by lenders.

Item 2008-8 - Submission by Texas Land Title Association to amend the Assignment of Rents/Leases Endorsement (T-27) to correct typographical errors in the form.

Item 2008-9 - Submission by Texas Land Title Association to amend the Texas Residential Owner Policy of Title Insurance - One-To-Four Residences (T-1R), the Texas Short Form Residential Mortgagee Policy of Title Insurance (T-2R), and the Mortgagee Title Policy Binder on Interim Construction Loan (T-13) to conform with the language of the Owner's Policy (T-1) and the Loan Policy (T-2) by changing the term "Owner" to "Owner's" and changing the term "Mortgagee" to "Loan."

Item 2008-10 - Submission by Texas Land Title Association to amend the Commitment for Title Insurance (T-7) to conform the language of the form with the language of the Owner's Policy (T-1) and the Loan Policy (T-2) and to conform the language of the form with the proposed changes to the Texas Residential Owner Policy of Title Insurance - One-To-Four Residences (T-1R), the Texas Short Form Residential Mortgagee Policy of Title Insurance (T-2R), and the Mortgagee Title Policy Binder on Interim Construction Loan (T-13).

Item 2008-11 - Submission by Texas Land Title Association to amend Schedule B of the Loan Policy (T-2) to correct a typographical error.

Item 2008-12 - Submission by Texas Land Title Association to amend Schedule A of the Loan Policy (T-2) to remove the Tax Deletion Endorsement (T-30) from the list of optional endorsements on Schedule A and to remove language from Schedule A regarding deleted provisions from affected endorsements, which will require such deletions to be included as a special exception on Schedule B of the commitment.

Item 2008-13 - Submission by Texas Land Title Association to amend the Deletion of Arbitration Provision of the Commitment for Title Insurance (T-7) to increase the threshold amount for arbitral matters to two million dollars in conformity with Procedural Rule 36.

Item 2008-14 - Submission by Texas Land Title Association to amend Procedural Rule P-17 to allow a pass-through to consumers of electronic filing fees and to withdraw Bulletin 163.

Item 2008-15 - Submission by Texas Land Title Association to amend Specific Areas and Procedures 5 of the Minimum Standards, Specific Instructions and Report Forms for Audit of Trust Funds Required of Texas Title Insurance Agents, Direct Operations, Title Attorneys and Attorneys Licensed as Escrow Officers to allow a pass-through to consumers of tax search service fees and notary sign-up fees.

Item 2008-16 - Submission by Texas Land Title Association to amend Procedural Rule 7 to conform the language of the rule with the Loan Policy (T-1) and the Owner's Policy (T-2).

Item 2008-17 - Submission by the Office of Public Insurance Counsel to amend Procedural Rule 18 to require that a copy of the Commitment for Title Insurance (T-7) on an Owner's Policy be delivered to the proposed insured no less than 5 business days prior to closing the transaction.

Item 2008-18 - Submission by the Office of Public Insurance Counsel to amend Procedural Rule 21 to remove language from Schedule D of the Commitment for Title Insurance (T-7) regarding optional advanced disclosure of settlement charges and optional advanced issuance of a Commitment for Title Insurance in conformity with the proposed amendment to Procedural Rule 18.

Item 2008-19 - Submission by the Office of Public Insurance Counsel to amend the Owner's Policy of Title Insurance (T-1) to remove

indemnity language from the form in conformity with the 2006 American Land Title Association Owner's Policy.

Item 2008-20 - Submission by the Office of Public Insurance Counsel to amend the Loan Policy of Title Insurance (T-2) to remove indemnity language from the form in conformity with the 2006 American Land Title Association Loan Policy.

Item 2008-21 - Submission by Stewart Title Guaranty Company to adopt a new form (T-24.1), entitled Non-Imputation Endorsement (Mezzanine Financing), to allow the non-imputation coverage provided in paragraph 4 of the Owner's Policy to be assigned by the Insured to a Mezzanine Lender.

Item 2008-22 - Submission by Stewart Title Guaranty Company to adopt a new Procedural Rule (P-___), entitled Insured Closing Letters by Licensees for benefit of non-agents or non-escrow officers prohibited, to prohibit the issuance of Insured Closing Letter by attorneys operating pursuant to Procedural Rule 22.

Item 2008-23 - Submission by Stewart Title Guaranty Company to adopt a new Procedural Rule (P-___), entitled Cancellation fees; fees for services rendered, to define and prohibit cancellation fees, to otherwise allow fees for furnishing title evidence or furnishing title evidence and examination, and to withdraw Bulletin 133.

Item 2008-24 - Submission by Stewart Title Guaranty Company to amend the Insured Closing Service form (T-50) to substantially conform to the American Land Title Association Standard Closing Protection Letter.

Item 2008-25 - Submission by Stewart Title Guaranty Company to amend the Co-Insurance Endorsement (T-48) to substantially conform to the American Land Title Association Standard Co-Insurance - Single Policy Endorsement.

Item 2008-26 - Submission by Stewart Title Guaranty Company to rescind the Last Dollar Endorsement (T-15) in its entirety.

Item 2008-27 - Submission by Stewart Title Guaranty Company to amend Procedural Rule P-9 to rescind the procedure for issuance of the Last Dollar Endorsement (T-15), which has also been proposed for rescission.

Item 2008-28 - Submission by Stewart Title Guaranty Company to amend Procedural Rule 55 to provide that the proposed Non-Imputation Endorsement (Mezzanine Financing) (T-24.1) be issued in accordance with the same procedural provisions currently set forth by the rule for the Non-Imputed Endorsement (T-24).

Item 2008-29 - Submission by Stewart Title Guaranty Company to amend the Texas Title Insurance Information form to increase the threshold amount for arbitral matters to two million dollars and to conform the language of the form to the Owner's Policy (T-1), the Loan Policy (T-2), and the Deletion of the Arbitration Provision (P-36).

Item 2008-30 - Submission by Stewart Title Guaranty Company to amend Administrative Rule L-1 to provide that a Title Insurance Company may cancel an agent's license for cause without giving the required advance notice of 30 days.

Item 2008-31 - Submission by Stewart Title Guaranty Company to amend the Future Advance/Revolving Credit Endorsement (T-35) to substantially conform the language of the endorsement to the American Land Title Association Future Advance Endorsement and to conform the language of the endorsement to the Loan Policy (T-2).

Item 2008-32 - Submission by Stewart Title Guaranty Company to amend the Leasehold Loan Policy Endorsement (T-5) to conform the language of the endorsement to the American Land Title Association

Leasehold - Loan Endorsement and to conform the language of the endorsement to the Loan Policy (T-2).

Item 2008-33 - Submission by Stewart Title Guaranty Company to amend the Leasehold Owner Policy Endorsement (T-4) to conform the language of the endorsement to the American Land Title Association Leasehold - Owners Endorsement and to conform the language of the endorsement to the Owner's Policy (T-1).

Item 2008-34 - Submission by Fidelity National Title Group to adopt a new Tax Parcel (single parcel) Endorsement Form (T-___) to insure against loss or damage sustained by reason of the insured parcel of land being taxed as part of a larger parcel of land or failing to constitute a separate tax parcel for real estate tax purposes.

Item 2008-35 - Submission by Fidelity National Title Group to adopt a new Tax Parcel (multiple parcels) Endorsement Form (T-___) to insure against loss or damage sustained by reason of the insured parcels of land being taxed as part of a larger parcel of land or failing to constitute a separate tax parcel for real estate tax purposes.

Item 2008-36 - Submission by Fidelity National Title Group to amend Procedural Rule 9, entitled Endorsement of Owner or Mortgagee Policies, to authorize the issuance of the proposed Tax Parcel (single parcel) Endorsement (T-___) and the proposed Tax Parcel (multiple parcels) Endorsement (T-___).

Item 2008-37 - Submission by Fidelity National Title Group to adopt a new Indirect Access and Entry Endorsement (T-23.1) to insure against loss or damage sustained in the event that an access easement does not provide actual vehicular and pedestrian access to and from the insured parcel of land and to amend Procedural Rule 54, entitled Access Endorsement, to authorize issuance of the proposed Indirect Access and Entry Endorsement (T-23.1).

Item 2008-38 - Submission by Fidelity National Title Group to amend Procedural Rule 56, entitled Contiguity Endorsement, to authorize the issuance of the proposed Contiguity Endorsement (T-25.1).

Item 2008-39 - Submission by Fidelity National Title Group to adopt a new Contiguity Endorsement (T-25.1) to insure against loss or damage sustained by reason of the presence of any gaps, strips, or gores lying between contiguous parcels of insured lands and does not require the contiguous boundary lines of the various parcels of land to be specifically identified.

Item 2008-40 - Submission by Fidelity National Title Group to amend Procedural Rule 20, entitled Amendment of Standard Exception in Mortgagee Policy or Mortgagee Title Policy Binder on Interim Construction Loan (Interim Binder) Relating to Taxes, to organize several procedural rules regarding the standard tax exception and Bulletin 153 into one rule, to provide guidance to the title industry regarding current year and rollback taxes, and to rescind Procedural Rule 29, entitled Amendment of Standard Exception in Mortgagee Policy Binder on Interim Construction Loan (Interim Binder) Relating to Taxes Not Yet Due and Payable.

Item 2008-41 - Submission by the Texas Department of Insurance to amend the Title Insurance Agent (L-1) administrative rule in Section VI of the Basic Manual to update statutory references in the rule.

Item 2008-42 - Submission by the Texas Department of Insurance to amend the Audit and Review of the Agent/Direct Operations Escrow and Trust Accounts (G.2) administrative rule in Section VI of the Basic Manual to update statutory references in the rule.

Item 2008-43 - Submission by the Texas Department of Insurance to amend the Policy Guaranty Fee (G.1) administrative rule in Section VI of the Basic Manual to update statutory references in the rule.

Item 2008-44 - Submission by the Texas Department of Insurance to amend the Requirements for Ceasing Operation by Agents and Direct Operations (D-1) administrative rule in Section VI of the Basic Manual to clarify the requirements of ceasing operation by agents or direct operations and to update statutory references in the rule.

Item 2008-45 - Submission by the Texas Department of Insurance to amend the Payment for Services Rendered By a Title Insurance Company, Title Insurance Agent, or Direct Operation to another Title Insurance Company, Title Insurance Agent or Direct Operation (P-24) procedural rule in Section IV of the Basic Manual to clarify payments for services rendered among title agents, companies and direct operations.

Item 2008-46 - Submission by the Texas Department of Insurance to amend the Reasonable Time for Furnishing Title Evidence (P-25) procedural rule in Section IV of the Basic Manual to provide a requirement for title agents and direct operations to maintain auditable records and documents that demonstrate compliance with the rule and to update statutory references in the rule.

Item 2008-47 - Submission by the Texas Department of Insurance to rescind the Statement of Assessment Received from and Recoupments Distributed to Title Insurance Company (T-G3) form in Section V of the Basic Manual.

Item 2008-48 - Submission by the Texas Department of Insurance to rescind the Guaranty Assessment Recoupment Charge Remittance (T-G2) form in Section V of the Basic Manual.

Item 2008-49 - Submission by the Texas Department of Insurance to amend the Supplemental Coverage Manufactured Housing Unit Endorsement (T-31.1) in Section II of the Basic Manual to remove an erroneous reference to "serial number" in the form and to insert a reference to the "policy number."

Item 2008-50 - Submission by the Texas Department of Insurance to amend the Leasehold Mortgagee Policy Endorsement (T-5) in Section II of the Basic Manual to remove an erroneous reference to "serial number" in the form.

Item 2008-51 - Submission by the Texas Department of Insurance to amend the Leasehold Owner Policy Endorsement (T-4) in Section II of the Basic Manual to remove an erroneous reference to "serial number" in the form.

Item 2008-52 - Submission by the Texas Department of Insurance to amend the Policy Guaranty Fee Remittance (T-G1) form in Section V of the Basic Manual to update the policy guaranty fee amount shown on the remittance form to reflect the correct amount due for each policy.

Item 2008-53 - Submission by the Texas Department of Insurance to amend the Title Insurance Escrow Officer (L-2) rule in Section VI of the Basic Manual to provide a procedure for a title agent or direct operation to notify the Department upon a change of name of a licensed escrow officer and to update statutory references in the rule.

Item 2008-54 - Submission by the Texas Department of Insurance to amend the Texas Title Insurance Statistical Plan to provide a Rate Code for the new Co-Insurance Endorsement (T-48) and to add reporting codes for the new personal property title insurance forms and endorsements.

Complete copies of the agenda items may be obtained from the Office of the Chief Clerk. Please submit your request to:

Office of the Chief Clerk

Texas Department of Insurance (Mail Code 113-2A)

P.O. Box 149104

Austin, Texas 78714-9104

Notwithstanding the foregoing, the Department reserves the right at any time to propose for adoption, pursuant to Texas Insurance Code Texas Insurance Code, Sections 31.02 and 2551.003, Chapters 2501, 2703, 2751 and the Administrative Procedure Act, any rule for the regulation of title insurance.

Docket No. 2691

Ratemaking Phase

Item 2008-55 - Submission by Texas Land Title Association to adopt a new rate rule (R-____) to provide a fair and equitable charge for issuance of the Texas Limited Coverage Residential Chain of Title Policy.

Item 2008-56 - Submission by Texas Land Title Association to amend Rate Rule 15 to remove a reference to the Manufactured Housing Endorsement (T-31) from the rule in conformity with Procedural Rule P-9.a(4).

Item 2008-57 - Submission by Texas Land Title Association to amend Rate Rule 5 to conform the language of the rule to the language of the forms and to allow the credit for the surrender of multiple Owner's Policies, as allowed by Rate Rule 3, to be combined with the simultaneous issue rate in simultaneous issue transactions.

Item 2008-58 - Submission by the Office of Public Insurance Counsel to amend the Schedule of Basic Premium Rates (R-1) to allow a premium schedule that provides multiple rates for each policy from which title insurance companies may choose to charge for the policy on a file and use basis.

Item 2008-59 - Submission by the Office of Public Insurance Counsel to amend the Schedule of Basic Premium Rates For Personal Property Title Insurance (R-1(A)) to allow a premium schedule that provides multiple rates for each policy from which title insurance companies may choose to charge for the policy on a file and use basis.

Item 2008-60 - Submission by Stewart Title Guaranty Company to amend the Premium for Non-Imputation Endorsement (R-31) to include a rate for the proposed Non-Imputation Endorsement (Mezzanine Financing) (T-24.1).

Item 2008-61 - Submission by Stewart Title Guaranty Company to amend Rate Rule R-11 to rescind the rate for the Last Dollar Endorsement (T-15), which has also been proposed for rescission.

Item 2008-62 - Submission by Fidelity National Title Group to amend Rate Rule 15, entitled Owner Policy Endorsement, to provide a rate of \$25.00 for the proposed Tax Parcel (single parcel) Endorsement (T-____) and a rate of \$25.00 per parcel for the proposed Tax Parcel (multiple parcels) Endorsement (T-____).

Item 2008-63 - Submission by Fidelity National Title Group to amend Rate Rule 11, entitled Mortgagee Policy Endorsement, to include a rate of \$25.00 for the proposed Tax Parcel (single parcel) Endorsement (T-____) and a rate of \$25.00 per parcel for the proposed Tax Parcel (multiple parcels) Endorsement (T-____).

Item 2008-64 - Submission by Fidelity National Title Group to amend Rate Rule 30, entitled Premium for Access Endorsement (T-23), to provide a rate of \$100 for the proposed Indirect Access and Entry Endorsement (T-23.1).

Item 2008-65 - Submission by Fidelity National Title Group to amend Procedural Rule 66, entitled Determination of Amount of Insurance (Policy Amount), to authorize the issuance of a single Owner's Policy covering multiple tracts of land purchased by a single purchaser pursuant to separate contracts, to amend Rate Rule 3, entitled Owner's Policy, to provide that the rate for a single Owner's Policy covering

multiple tracts of land purchased by a single purchaser shall be the aggregate of the Basic Premium Rate as applied to each sales price, and to rescind Bulletin 120.

Item 2008-66 - Submission by the Texas Department of Insurance to adopt a rate rule entitled Credit for Exclusion of or General Exception for Minerals (R-____) to provide a credit when coverage for the mineral estate is excluded from or generally excepted to or coverage.

In the Ratemaking Phase the parties shall consider and provide evidence on all relevant and necessary points. Evidence in the following areas is particularly requested:

1. Comments and proposals for alternative rating structures including, but not necessarily limited to, differences in rates or premium splits by geographic region (e.g., rural versus urban), by size of agency, and by type of business written.
2. Comments and proposals for alternative rating structures that might promote greater competition in the marketplace.
3. The likely effect on costs of changes in productivity such as those arising from improvements in technology both in title agent and underwriter operations and external areas such as county clerks' operations, and how these are likely to affect future rate needs.
4. Comments and proposals for the identification and treatment in ratemaking of expense outliers for individual entities (underwriters and agents) in various expense categories (e.g., salaries, benefits, rent, etc.) or a combination of categories and whether the impact of such outliers should be limited in calculating overall rate needs.
5. According to the April 2007, report of the United States Government Accountability Office (GAO), the number of affiliated business arrangements (ABAs), defined as situations in which real estate or other professional are part or full time owners of title agencies, have been growing significantly in recent years. Provide comments on the phenomenon in Texas, how this might be affecting costs and rates, and how abuses, if any, might be addressed in the ratemaking system.
6. Comments and proposals on how profits earned on escrow functions, tax certificates, recording fees, and other miscellaneous income should be considered, if at all, in establishing appropriate title insurance profit margins.
7. Comments and proposals on the appropriate reporting and allocation of income and expenses for ratemaking purposes generally, including possible modifications to the annual statistical plans' instructions to help enhance reporting consistency and accuracy, including the effects of personal property title insurance income and expenses.

Commissioner's Policies

The Commissioner's policies regarding the setting of rates for title insurance provided for under Texas Insurance Code, Chapter 2703 are set out below. This policy statement is not intended to limit the type of evidence a party may offer at the hearing. The pertinent Commissioner's policies are as follows:

1. Evidence to be considered.

It is the Commissioner's policy to consider all relevant evidence and issues in making a determination of rates. To ensure a complete record, the Commissioner shall take official notice of:

Commissioner's Order 08-0588 dated July 2, 2008, entitled "In the Matter of the 2007 Personal Property Title Insurance Ratemaking Hearing SOAH Docket No. 454-08-0220.G; Docket No. 2673."

Commissioner's Order 08-0160 dated February 25, 2008, entitled "In the Matter of the 2006 Texas Title Insurance Biennial Rate Hearing

Consent Order SOAH Docket No. 454-07-3748.G; TDI Enforcement File No. 50552."

Commissioner's Order 06-1280 dated December 12, 2006, and entitled "In the Matter of the 2004 Texas Title Insurance Biennial Rate Hearing Docket Number 2601."

Commissioner's Order 04-0405 dated April 23, 2004, and entitled "In the Matter of the 2002 Texas Title Insurance Biennial Rate Hearing Docket Number 2538."

Commissioner's Order 02-0901 dated August 23, 2002, and entitled "In the Matter of the 2000 Texas Title Insurance Biennial Rate Hearing Docket Number 2471."

Commissioner's Order 00-0534 dated May 15, 2000, and entitled "In the Matter of the 1998 Texas Title Insurance Biennial Rate Hearing Docket Number 2394."

Commissioner's Order 98-0620 dated May 27, 1998, and entitled "In the Matter of the 1996 Texas Title Insurance Biennial Rate Hearing Docket Number 2279."

The United States Government Accountability Office Report to the Ranking Member, Committee on Financial Services, House of Representatives, dated April 2007, and entitled "Title Insurance: Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers."

Texas Department of Insurance reports for Calendar Year 1997, Calendar Year 1998, Calendar Year 1999, Calendar Year 2000, Calendar Year 2001, Calendar Year 2002, Calendar Year 2003, Calendar Year 2004, Calendar Year 2005, and Calendar Year 2006, and entitled "Texas Title Insurance Agents Statistical Report."

Texas Department of Insurance reports for Calendar Year 1997, Calendar Year 1998, Calendar Years 1999-2002, Calendar Years 1999-2003, Calendar Years 1999-2004, Calendar Years 2001-2005, and Calendar Years 2002-2006, and entitled "State of Texas Title Insurance Experience Report."

2. Parties to be admitted to ratemaking hearing.

Anyone who wishes to participate in the hearing as a party for the ratemaking phase must file a motion for admission as a party by 5:00 p.m. on August 11, 2008, with the Chief Clerk's Office.

3. Purposes of pre-hearing conferences.

An initial pre-hearing conference will be held before the General Counsel of the Department at 10:00 a.m. on September 10, 2008, in room 102 of the first floor of the William P. Hobby, Jr. State Office Building located at 333 Guadalupe Street in Austin, Texas. The pre-hearing conference will be held for the following purposes:

to rule on motions for admission of parties to the ratemaking phase; and

to schedule the submission of pre-filed testimony, briefs, and other items; and

to address other matters that may simplify the proceedings.

Subsequent pre-hearing conferences will be scheduled as necessary to consider other matters as may aid in the simplification of the proceedings.

4. Conduct expected at hearing.

Each page of any exhibit offered in evidence at a hearing before the Commissioner, including prefiled testimony, must be on 8 1/2" by 11" paper, numbered consecutively at the center of the bottom margin, and three-hole-punched along the left margin. The front page of each ex-

hibit must indicate that the exhibit will be part of the record of a public hearing before the Commissioner and must identify the subject of the hearing, the docket number, the date of the hearing, and the party offering the exhibit. On the front page, the party offering the exhibit must also describe the exhibit and leave a space for numbering the exhibit. For example:

Public Hearing before the Department of Insurance

Subject of Hearing:

Docket No. 2690 and 2691

Date: _____

Party: _____

Exhibit # _____

Description of Exhibit _____

Parties offering exhibits into evidence at the hearing should be prepared with sufficient copies of each proposed exhibit to furnish the following:

the original exhibit, which will be tendered to the Commissioner for marking and retention for the official record, after which the attorneys shall use an exact photocopy of such marked exhibit in the examination of the witness; and

one copy each for every other party admitted to the hearing; and

six paper copies to be filed with the Office of Chief Clerk; and

one electronic copy to be filed with the Office of Chief Clerk.

Testimony and exhibits accompanying testimony from the parties' witnesses, including their underlying work papers, must be submitted and made available in both paper and electronic format compatible and accessible by a computer using the Windows XP, Service Pack 2, operating system and Microsoft Office, Service Pack 3 software. Parameters, assumptions, and references to underlying data should be identifiable in the electronic exhibits. All information submitted in electronic format to the Office of the Chief Clerk shall be submitted in a format that does not require the use of passwords or other security measures for accessibility and utilization by the Department.

5. Deadlines subject to change.

All deadlines in this notice are subject to change at the Commissioner's discretion to the extent permitted by statute and rule.

TRD-200803743

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: July 22, 2008

Texas Department of Insurance, Division of Workers' Compensation

Correction of Error

The Texas Department of Insurance, Division of Workers' Compensation adopted amendments to 28 TAC §133.2 and new §133.4 and §133.5, under Chapter 133, General Medical Provisions, Subchapter A, General Rules for Medical Billing and Processing. The adoption notice was published in the July 18, 2008, issue of the *Texas Register* (33 TexReg 5701).

The Department's submission preamble contains the following errors.

On page 5703, in the paragraph that begins, "Subsection (i) provides that if notice..." the word "Section" should be "Subsection" under the second sentence of the paragraph.

The sentence should read as follows: "Subsection (j) contains a severability clause stating that if a court of competent jurisdiction holds that any provision of the section is inconsistent with any statutes of this state, is unconstitutional, or is found to be invalid for any reason, the remaining provisions of this section shall remain in effect."

On page 5704, in the paragraph that begins, "Subsection 133.5(d) provides..." the reference to "Subsection 5(e)" should be to "Subsection 133.5(e)" in the second sentence.

The sentence should read as follows: "Subsection 133.5(e) provides that if the informal and voluntary report does not meet the requirements of Labor Code §413.0115 and this section, the informal network or voluntary network may be held liable for any administrative violations."

On page 5705, in the paragraph that begins, "Agency Response: The Division clarifies that this section applies to any contractual agreement..." the reference to "Labor Code §401.01119)" in the second to the last sentence is incorrect.

The sentence should read as follows: "However, the Division points out that a prescription medication is defined as "health care" under Labor Code §401.011(19) and that pharmacists and pharmacies are considered health care providers under Labor Code §401.011(21) and (22)."

TRD-200803758

Texas Lottery Commission

Instant Game Number 1068 "\$1,000,000 Gold Rush"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1068 is "\$1,000,000 GOLD RUSH". The play style for Game 1 is "key number match with doubler". The play style for Game 2 is "key symbol match with doubler". The play style for Games 3 and 4 is "row/column/diagonal with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1068 shall be \$20.00 per ticket.

1.2 Definitions in Instant Game No. 1068.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: \$20.00, \$25.00, \$30.00, \$40.00, \$50.00, \$100, \$200, \$400, \$1,000, \$ONE MILL, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, GOLD BAR SYMBOL, APPLE SYMBOL, ORANGE SYMBOL, WATERMELON SYMBOL, BANANA SYMBOL, STAR SYMBOL, LEMON SYMBOL, BELL SYMBOL, HORSESHOE SYMBOL, CLOVER SYMBOL, BAR SYMBOL, SEVEN SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, PINEAPPLE SYMBOL, CHERRY SYMBOL and COIN SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink

in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1068 - 1.2D

PLAY SYMBOL	CAPTION
\$20.00	TWENTY
\$25.00	TWY FIV
\$30.00	THIRTY
\$40.00	FORTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$400	FOR HUND
\$1,000	ONE THOU
\$ONE MILL	ONE MIL
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX

37	TRSV
38	TRET
39	TRNI
40	FRTY
GOLD BAR SYMBOL	DBL
APPLE SYMBOL	APL
ORANGE SYMBOL	ORG
WATERMELON SYMBOL	MEL
BANANA SYMBOL	BAN
STAR SYMBOL	STA
LEMON SYMBOL	LEM
BELL SYMBOL	BEL
HORSESHOE SYMBOL	SHO
CLOVER SYMBOL	CLO
BAR SYMBOL	BAR
SEVEN SYMBOL	SVN
CROWN SYMBOL	CRN
DIAMOND SYMBOL	DMO
PINEAPPLE SYMBOL	PNA
CHERRY SYMBOL	CHY
COIN SYMBOL	DBL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$40.00, \$50.00, \$100, \$200 or \$400.

H. High-Tier Prize - A prize of \$1,000 or \$1,000,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1068), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 025 within each pack. The format will be: 1068-0000001-001.

K. Pack - A pack of "\$1,000,000 GOLD RUSH" Instant Game tickets contains 025 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 025 while the other fold will show the back of ticket 001 and front of 025.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "\$1,000,000 GOLD RUSH" Instant Game No. 1068 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "\$1,000,000 GOLD RUSH" Instant Game is determined once the latex on the ticket is scratched off to expose 73 (seventy-three) Play Symbols. In Game 1, if a player matches any of YOUR NUMBERS play symbols to any of the GOLD BAR NUMBERS play symbols, the player wins PRIZE shown for that number. If a player reveals a "gold bar" play symbol, the player wins DOUBLE the PRIZE shown for that symbol. In Game 2, if a player reveals 3 matching symbols within a ROW, the player wins PRIZE shown for that row. If a player reveals 2 matching symbols and a "coin" symbol, the player wins DOUBLE the PRIZE shown for that row. In Games 3 and 4, for each game, if a player reveals 3 "X"s or 3 "O"s in any one row, column or diagonal, the player wins PRIZE shown for that GAME. If a player reveals 3 "dollar" symbols in any one row, column or diagonal, the player wins DOUBLE the PRIZE shown for that GAME. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 73 (seventy-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 73 (seventy-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 73 (seventy-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 73 (seventy-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. GAME 1: No duplicate GOLD BAR NUMBERS play symbols on a ticket.

C. GAME 1: No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

D. GAME 1: No 3 or more matching non-winning prize symbols in this game.

E. GAME 1: Non-winning prize symbol(s) will never be the same as a winning prize symbol(s) in this game.

F. GAME 1: The "gold bar" (doubler) symbol will only appear on intended winning double games as dictated by the prize structure.

G. GAME 2: The "coin" (doubler) symbol will never appear more than once in ROW and only on intended winning double games as dictated by the prize structure.

H. GAME 2: There will be many near wins of two matching symbols on non-winning games.

I. GAME 2: Non-winning prize symbol(s) will never be the same as a winning prize symbol(s) in this game.

J. GAME 2: No duplicate non-winning ROWS in any order in this game.

K. GAME 2: No duplicate non-winning prize symbols in this game.

L. GAMES 3 & 4: The "\$" (doubler) symbol will only appear three times in a row, column or diagonal line on intended winning double games as dictated by the prize structure.

M. GAMES 3 & 4: Each game may only win once.

N. GAMES 3 & 4: The "\$" (doubler) symbol will appear at least 3 times on each non-winning game.

O. GAMES 3 & 4: No duplicate non-winning games between GAMES 3 & 4.

P. GAMES 3 & 4: No duplicate non-winning prize symbols between GAMES 3 & 4.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$1,000,000 GOLD RUSH" Instant Game prize of \$20.00, \$30.00, \$40.00, \$50.00, \$100, \$200 or \$400, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$40.00, \$50.00, \$100, \$200 or \$400 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$1,000,000 GOLD RUSH" Instant Game prize of \$1,000 or \$1,000,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification.

When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$1,000,000 GOLD RUSH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "\$1,000,000 GOLD RUSH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "\$1,000,000 GOLD RUSH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,000,000 tickets in the Instant Game No. 1068. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1068 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$20	330,000	9.09
\$30	480,000	6.25
\$40	180,000	16.67
\$50	120,000	25.00
\$100	31,250	96.00
\$200	10,000	300.00
\$400	1,000	3,000.00
\$1,000	525	5,714.29
\$1,000,000	3	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 2.60. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1068 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1068, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200803762
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 23, 2008



Instant Game Number 1081 "King of Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1081 is "KING OF CASH". The play style is "beat score with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1081 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1081.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 16, 17, 18, 19, 20, A CARD SYMBOL, K CARD SYMBOL, Q CARD SYMBOL, 10 CARD SYMBOL, 9 CARD SYMBOL, 8 CARD SYMBOL, 7 CARD SYMBOL, 6 CARD SYMBOL, 5 CARD SYMBOL, 4 CARD SYMBOL, 3 CARD SYMBOL, 2 CARD SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$500, \$1,000 or \$50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1081 - 1.2D

PLAY SYMBOL	CAPTION
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
A CARD SYMBOL	ACE
K CARD SYMBOL	KNG
Q CARD SYMBOL	QUN
J CARD SYMBOL	JCK
10 CARD SYMBOL	TEN
9 CARD SYMBOL	NIN
8 CARD SYMBOL	EGT
7 CARD SYMBOL	SVN
6 CARD SYMBOL	SIX
5 CARD SYMBOL	FIV
4 CARD SYMBOL	FOR
3 CARD SYMBOL	THR
2 CARD SYMBOL	TWO
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$5,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1081), a seven (7) digit pack number, and

a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1081-0000001-001.

K. Pack - A pack of "KING OF CASH" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "KING OF CASH" Instant Game No. 1081 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in

Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "KING OF CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 46 (forty-six) Play Symbols. The player must add cards in each HAND. If the total of any of YOUR HANDS beats the DEALER'S TOTAL, the player wins the prize shown for that HAND. If any of YOUR HANDS is a pair of QUEEN symbols, the player wins the prize shown for that HAND instantly. If any of YOUR HANDS is a pair of KING symbols, the player wins DOUBLE the PRIZE shown for that HAND. Each HAND is played separately. J, Q, K = 10. A = 11. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 46 (forty-six) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 46 (forty-six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 46 (forty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 46 (forty-six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file

at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The pair of "QUEEN" (auto win) play symbols will appear on approximately 40% of winning tickets up to and including the \$500 prize levels that do not contain a pair of "KING" (doubler) play symbols.

C. The pair of "KING" (doubler) play symbols will only appear as dictated by the prize structure.

D. No ticket will contain both a pair of "QUEEN" (auto win) play symbols and a pair of "KING" (doubler) play symbols.

E. No four or more matching non-winning prize symbols will appear on a ticket.

F. No duplicate non-winning HANDS on a ticket in the same order.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. No ties between any HAND and the DEALER'S TOTAL play symbol.

I. No HAND will total less than 12.

J. No HAND will contain two Ace play symbols.

K. The top prizes will be approximately evenly distributed throughout the game.

L. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "KING OF CASH" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct

the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "KING OF CASH" Instant Game prize of \$1,000, \$5,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "KING OF CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "KING OF CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "KING OF CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 1081. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1081 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	336,000	15.00
\$10	436,800	11.54
\$15	134,400	37.50
\$20	117,600	42.86
\$50	67,200	75.00
\$100	18,690	269.66
\$500	1,428	3,529.41
\$1,000	420	12,000.00
\$5,000	21	240,000.00
\$50,000	5	1,008,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.53. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1081 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1081, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200803664
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 18, 2008



Instant Game Number 1083 "Best of 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1083 is "BEST OF 7'S". The play style is "multiple games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1083 shall be \$7.00 per ticket.

1.2 Definitions in Instant Game No. 1083.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: \$7.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$500, \$2,000, \$75,000, 1, 2, 3, 4, 5, 6, 8, 9, 7 SYMBOL, X SYMBOL, O SYMBOL, BOOT SYMBOL, SADDLE SYMBOL, HAT SYMBOL, SPUR SYMBOL, HORSE SYMBOL, STAR SYMBOL, HORSESHOE SYMBOL, BEEF SYMBOL, STEER SYMBOL, BRANDING IRON SYMBOL, FIRE SYMBOL, SUN SYMBOL, 1 DICE SYMBOL, 2 DICE SYMBOL, 3 DICE SYMBOL, 4 DICE SYMBOL, 5 DICE SYMBOL, 6 DICE SYMBOL, DIAMOND SYMBOL, GOLD BAR SYMBOL, POT OF GOLD SYMBOL, BAG OF MONEY SYMBOL, STACK OF BILLS SYMBOL AND DOLLAR SIGN SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1083 - 1.2D

PLAY SYMBOL	CAPTION
\$7.00	SEVEN\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$2,000	TWO THOU
\$75,000	75 THOU
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
8	EGT
9	NIN
7 SYMBOL	AUTO
7 SYMBOL	
X	
O	
BOOT SYMBOL	BOOT
SADDLE SYMBOL	SADDLE
HAT SYMBOL	HAT
SPUR SYMBOL	SPUR
HORSE SYMBOL	HORSE
STAR SYMBOL	STAR
HORSESHOE SYMBOL	SHOE
BEEF SYMBOL	BEEF
STEER SYMBOL	STEER
BRANDING IRON SYMBOL	BRAND
FIRE SYMBOL	FIRE
SUN SYMBOL	SUN
7 SYMBOL	SVN
1 DICE SYMBOL	ONE
2 DICE SYMBOL	TWO
3 DICE SYMBOL	THR
4 DICE SYMBOL	FOR
5 DICE SYMBOL	FIV
6 DICE SYMBOL	SIX
DIAMOND SYMBOL	DIAMD
GOLD BAR SYMBOL	GOLD
POT OF GOLD SYMBOL	POTGLD
BAG OF MONEY SYMBOL	\$BAG
STACK OF BILLS SYMBOL	BILLS
DOLLAR SIGN SYMBOL	MONEY

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$7.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$2,000 or \$75,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1083), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1083-0000001-001.

K. Pack - A pack of "BEST OF 7'S" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BEST OF 7'S" Instant Game No. 1083 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BEST OF 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 42 (forty-two) Play symbols. In GAME 1, if the player matches either of YOUR NUMBERS to the LUCKY NUMBER, the player wins the PRIZE shown for that number. If the player reveals a 7 symbol, the player wins the PRIZE shown for that number instantly. In GAME 2, if the player reveals 3 X's or O's in the same row, column or diagonal, the player wins the PRIZE shown. If the player reveals 3 "7"'s in the same row, column or diagonal, the player wins DOUBLE the PRIZE shown. In GAME 3, if the total of the 2 numbers equals 7, the player wins \$7 INSTANTLY. In GAME 4, if the player finds 3 matching amounts, the player wins that amount. If the player finds 2 matching amounts and a 7, the player wins DOUBLE that amount. In GAME 5, if the player reveals 3 "7" symbols, the player wins the PRIZE in the PRIZE BOX. In GAME 6, if YOUR DICE total 7 within a ROLL, the player wins the PRIZE shown for that ROLL. In GAME 7, if the player matches 2 out of 3 symbols, the player wins \$7 INSTANTLY. No portion of the display printing or any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 42 (forty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
 2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
 3. Each of the Play Symbols must be present in its entirety and be fully legible;
 4. Each of the Play Symbols must be printed in black ink except for dual image games;
 5. The ticket shall be intact;
 6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
 7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
 8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
 9. The ticket must not be counterfeit in whole or in part;
 10. The ticket must have been issued by the Texas Lottery in an authorized manner;
 11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
 12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
 13. The ticket must be complete and not miscut, and have exactly 42 (forty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
 14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
 15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
 16. Each of the 42 (forty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
 17. Each of the 42 (forty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
 18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
 19. The ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's

discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.
- B. Non-winning prize symbols will never be the same as a winning prize symbol in this game.
- C. GAME 1: No duplicate non-winning YOUR NUMBERS play symbols in this game.
- D. GAME 1: No duplicate non-winning prize symbols.
- E. GAME 2: This game may only win once.
- F. GAME 4: No four or more of a kind in this game.
- G. GAME 4: No three pairs in this game.
- H. GAME 4: Game may only win one time.
- I. GAME 4: No 3 or more matching play symbols and a 7 play symbol will ever occur.
- J. GAME 5: This game may only win once.
- K. GAME 5: No 3 or more matching non-winning play symbols in this game.
- L. GAME 6: No duplicate non-winning rolls in any order.
- M. GAME 6: No duplicate non-winning prize symbols in this game.
- N. GAME 7: No duplicate non-winning play symbols in this game.
- O. GAME 7: There will never be 3 matching play symbols in this game.

2.3 Procedure for Claiming Prizes.

- A. To claim a "BEST OF 7'S" Instant Game prize of \$7.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.
- B. To claim a "BEST OF 7'S" Instant Game prize of \$2,000 or \$75,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BEST OF 7'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

- 1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
 - 2. delinquent in making child support payments administered or collected by the Attorney General; or
 - 3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
 - 4. in default on a loan made under Chapter 52, Education Code; or
 - 5. in default on a loan guaranteed under Chapter 57, Education Code.
- F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "BEST OF 7'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "BEST OF 7'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game

ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the

ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 1083. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1083 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$7	336,000	15.00
\$10	604,800	8.33
\$15	201,600	25.00
\$20	268,800	18.75
\$50	63,000	80.00
\$100	25,200	200.00
\$500	1,890	2,666.67
\$2,000	100	50,400.00
\$75,000	5	1,008,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.36. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1083 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1083, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200803665

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: July 18, 2008



Instant Game Number 1099 "Texas Ranger Limited Edition Silver Series"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1099 is "TEXAS RANGER LIMITED EDITION SILVER SERIES". The play style is "key number match with multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1099 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1099.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 5X SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$40.00, \$50.00, \$100, \$500, \$1,000, \$50,000 and CHOPPER SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1099 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
5X SYMBOL	WINX5
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$25.00	TWY FIV
\$40.00	FORTY

\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$50,000	50 THOU
CHOPPER SYMBOL	CHOPPER

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$50,000 or CHOPPER.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1099), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1099-0000001-001.

K. Pack - A pack of "TEXAS RANGER LIMITED EDITION SILVER SERIES" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TEXAS RANGER LIMITED EDITION SILVER SERIES" Instant Game No. 1099 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "TEXAS RANGER LIMITED EDITION SILVER SERIES" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a 5X SYMBOL, the player wins 5 (five) TIMES the PRIZE shown for that symbol. If the winning prize symbol is a CHOPPER SYMBOL, the player wins a Texas Ranger Limited Edition Silver Series Custom Motorcycle. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the

Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No four or more matching non-winning prize symbols will appear on a ticket.

C. Non-winning prize symbols will never be the same as the winning prize symbol(s).

D. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

E. No duplicate WINNING NUMBERS play symbols on a ticket.

F. The "5X" (win x 5) play symbol will only appear on winning tickets as dictated by the prize structure.

G. The "CHOPPER" prize symbol may appear on both winning and non-winning tickets.

H. The top prize symbol and the "CHOPPER" prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS RANGER LIMITED EDITION SILVER SERIES" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TEXAS RANGER LIMITED EDITION SILVER SERIES" Instant Game prize of \$1,000, \$50,000 or CHOPPER, the

claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TEXAS RANGER LIMITED EDITION SILVER SERIES" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "TEXAS RANGER LIMITED EDITION SILVER SERIES" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "TEXAS RANGER LIMITED EDITION SILVER SERIES" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member

of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by

the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,520,000 tickets in the Instant Game No. 1099. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1099 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	588,800	9.38
\$10	515,200	10.71
\$15	165,600	33.33
\$20	147,200	37.50
\$50	67,160	82.19
\$100	7,038	784.31
\$500	644	8,571.43
\$1,000	24	230,000.00
\$50,000	6	920,000.00
CHOPPER	4	1,380,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.70. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1099 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1099, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 22, 2008



Instant Game Number 1103 "Bonus Cashword"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1103 is "BONUS CASHWORD". The play style is "crossword".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1103 shall be \$3.00 per ticket.

1.2 Definitions in Instant Game No. 1103.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.


B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are:

A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, and blackened square.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1103 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
	

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$3.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$100 or \$500.

H. High-Tier Prize - A prize of \$5,000 or \$35,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1103), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1103-0000001-001.

K. Pack - A pack of "BONUS CASHWORD" Instant Game tickets contain 125 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 125 will be revealed on the back of the

pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 125 will be shown on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BONUS CASHWORD" Instant Game No. 1103 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BONUS CASHWORD" Instant Game is determined once the latex on the ticket is scratched off to expose 141 (one hundred forty-one) possible play symbols. The player must scratch off the YOUR LETTERS and BONUS play areas. The player must use the YOUR LETTERS and the BONUS LETTERS to form words in the BONUS CASHWORD puzzle and the player wins the amount shown in the PRIZE LEGEND. There will be only one prize per ticket. Letters combined to form a complete "word" must be revealed in an unbroken horizontal (left to right) sequence or vertical (top to bottom) sequence of letters within the BONUS CASHWORD puzzle. Only letters within the BONUS CASHWORD puzzle grid that are matched with the YOUR LETTERS and BONUS LETTERS can be used to form a complete "word". In the BONUS CASHWORD puzzle, every lettered square within an unbroken horizontal or vertical sequence must be matched with the YOUR LETTERS or BONUS LETTERS to be considered a complete "word". Words within a word are not eligible for a prize. For example, all the YOUR LETTERS play symbols "S, T, O, N, E" must be revealed for this to count as one complete "word". TON, ONE or any other portion of the sequence of STONE would not count as a complete "word". A complete "word" must contain at least three letters. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. One hundred forty-one (141) possible Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have 141 (one hundred forty-one) possible Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 141 (one hundred forty-one) possible Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 141 (one hundred forty-one) possible Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. Each grid will contain exactly the same amount of letters.

C. Each grid will contain exactly the same amount of words.

D. No duplicate words on a ticket.

E. All words used will be from the TEXAS APPROVED WORD LIST CASHWORD/CROSSWORD v.1.0.

F. All words will contain a minimum of 3 letters.

G. All words will contain a maximum of 9 letters.

H. The CALLER AREA is defined as the combined YOUR LETTERS and BONUS area.

I. No duplicate play symbols in the CALLER AREA.

J. There will be a minimum of 3 vowels (A, E, I, O and U) in the CALLER AREA.

K. A minimum of 15 play symbols in the CALLER AREA will match at least one letter in the crossword grid.

L. At least one play symbol in the BONUS area will match to at least one letter in the crossword grid.

M. The presence or absence of any letter or combination of letters in the CALLER AREA will not be indicative of a winning or non-winning ticket.

N. No consonant play symbol will appear more than 9 times in the crossword grid and no vowel will appear more than 14 times in the crossword grid.

O. Words from the TEXAS REJECTED WORD LIST v.2.0 will not appear horizontally in the YOUR LETTERS area.

P. On winning tickets, at least 1 play symbol in the BONUS area will match at least one letter in a completed word.

Q. Each crossword grid will have at least 2 completed words.

R. Each ticket will have at least 5 near wins (word with all but one letter matched).

2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS CASHWORD" Instant Game prize of \$3.00, \$5.00, \$10.00, \$20.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BONUS CASHWORD" Instant Game prize of \$5,000 or \$35,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BONUS CASHWORD" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

- B. if there is any question regarding the identity of the claimant;

- C. if there is any question regarding the validity of the ticket presented for payment; or

- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "BONUS CASHWORD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "BONUS CASHWORD" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the

player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefore. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

Figure 2: GAME NO. 1103 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	3,360,000	8.93
\$5	4,320,000	6.94
\$10	600,000	50.00
\$20	360,000	83.33
\$100	61,500	487.80
\$500	12,500	2,400.00
\$5,000	75	400,000.00
\$35,000	50	600,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.44. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1103 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1103, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200803763
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: July 23, 2008



Instant Game Number 1108 "Diamonds & 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1108 is "DIAMONDS & 7'S". The play style is "slots-straight line".

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 30,000,000 tickets in the Instant Game No. 1103. The approximate number and value of prizes in the game are as follows:

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1108 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1108.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: DIAMOND SYMBOL, SEVEN SYMBOL, DOLLAR SYMBOL, BELL SYMBOL, STAR SYMBOL, GOLD BAR SYMBOL, HORSESHOE SYMBOL, POT OF GOLD SYMBOL and COIN SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1108 - 1.2D

PLAY SYMBOL	CAPTION
DIAMOND SYMBOL	DIAM
SEVEN SYMBOL	SEVN
DOLLAR SYMBOL	DOLR
BELL SYMBOL	BELL
STAR SYMBOL	STAR
GOLD BAR SYMBOL	GBAR
HORSESHOE SYMBOL	SHOE
POT OF GOLD SYMBOL	GPOT
COIN SYMBOL	COIN

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000 or \$20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1108), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1108-0000001-001.

K. Pack - A pack of "DIAMONDS & 7'S" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "DIAMONDS & 7'S" Instant Game No. 1108 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "DIAMONDS & 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 21 (twenty-one) Play Symbols. In each SPIN, if a player reveals the 3 play symbols in the EXACT ORDER as shown in the PRIZE LEGEND, the player wins the corresponding prize. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

- Exactly 21 (twenty-one) Play Symbols must appear under the latex overprint on the front portion of the ticket;
- Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
- Each of the Play Symbols must be present in its entirety and be fully legible;
- Each of the Play Symbols must be printed in black ink except for dual image games;
- The ticket shall be intact;
- The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
- The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
- The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
- The ticket must not be counterfeit in whole or in part;
- The ticket must have been issued by the Texas Lottery in an authorized manner;
- The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
- The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
- The ticket must be complete and not miscut, and have exactly 21 (twenty-one) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
- The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
- The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
- Each of the 21 (twenty-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 21 (twenty-one) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. There will be many near wins (pair of 7's or diamonds or a 7 and a diamond) in non-winning spins.

C. Non-winning tickets will contain no more than 3 of the same play symbol, with the exception of the 7 or the diamond.

D. There will be no duplicate non-winning spins in any order.

E. There will be no 3 identical non-winning play symbols in adjacent positions in any row, column or diagonal line.

F. There will be no winning combination play symbols in adjacent positions in a column or diagonal line on non-winning tickets.

2.3 Procedure for Claiming Prizes.

A. To claim a "DIAMONDS & 7'S" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "DIAMONDS & 7'S" Instant Game prize of \$1,000 or \$20,000, the claimant must sign the winning ticket and present it at

one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "DIAMONDS & 7'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "DIAMONDS & 7'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "DIAMONDS & 7'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the

back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 9,000,000 tickets in the Instant Game No. 1108. The approximate number and value of prizes in the game are as follows:~

Figure 2: GAME NO. 1108 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	720,000	12.50
\$4	756,000	11.90
\$5	144,000	62.50
\$10	108,000	83.33
\$20	72,000	125.00
\$50	55,425	162.38
\$100	9,225	975.61
\$500	250	36,000.00
\$1,000	40	225,000.00
\$20,000	7	1,285,714.29

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.83. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1108 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1108, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200803764

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: July 23, 2008

Instant Game Number 1119 "\$250 Christmas Club"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1119 is "\$250 CHRISTMAS CLUB". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1119 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 1119.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for

dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 and \$250.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1119 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$250	25HUN 50

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$250.

H. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven

(7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

I. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1119), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1119-0000001-001.

J. Pack - A pack of "\$250 CHRISTMAS CLUB" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

K. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

L. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "\$250 CHRISTMAS CLUB" Instant Game No. 1119 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "\$250 CHRISTMAS CLUB" Instant Game is determined once the latex on the ticket is scratched off to expose 12 (twelve) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol, the player wins the PRIZE shown for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 12 (twelve) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 12 (twelve) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 12 (twelve) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols on a ticket.

C. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

D. Non-winning prize symbols will never be the same as the winning prize symbol(s).

E. No duplicate WINNING NUMBERS play symbols on a ticket.

F. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).

2.3 Procedure for Claiming Prizes.

A. To claim a "\$250 CHRISTMAS CLUB" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$250, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00 or \$250 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above

prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. As an alternative method of claiming a "\$250 CHRISTMAS CLUB" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

D. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "\$250

CHRISTMAS CLUB" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "\$250 CHRISTMAS CLUB" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,000,000 tickets in the Instant Game No. 1119. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1119 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	960,000	12.50
\$2	1,160,000	10.34
\$4	140,000	85.71
\$5	80,000	150.00
\$10	100,000	120.00
\$20	60,000	200.00
\$50	7,600	1,578.95
\$250	1,500	8,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.78. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1119 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1119, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200803666
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 18, 2008

Texas Parks and Wildlife Department

Notice of Availability - Final Damage Assessment and Restoration Plan

Agencies: Texas Parks and Wildlife Department (TPWD), Texas Commission on Environmental Quality (TCEQ), the Texas General Land Office and the United States Department of the Interior (DOI) represented by the United States Fish and Wildlife Service (USFWS) (hereafter, Natural Resource Trustees).

Action: Notice of Final Damage Assessment and Restoration Plan (DARP) for natural resource damages resulting from the Former Empire Oil Refinery in Gainesville, Cooke County Texas (Site).

Summary: This notice serves to inform the public that the Natural Resource Trustees have accepted as final the DARP to resolve Natural Resource Damages associated with this Site. The DARP outlines the injuries resulting from the unauthorized discharge of oily products and

hazardous substances into waters of the State of Texas and the adjacent habitats, as well as the proposed restoration project selected to compensate for those injuries. As no substantive comments were received from the public on the Draft DARP published in the In Addition section of the February 1, 2008, issue of the *Texas Register* (33 TexReg 1007), the Trustees have finalized the selection of the preferred restoration alternative and finalized the DARP.

A copy of the Final DARP may be obtained by contacting: Charles Wood, Trustee Program, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, Phone: (512) 389-8755, e-mail: charles.wood@tpwd.state.tx.us.

The DARP becomes final upon publication of this notice.

Supplementary Information: Located on approximately 200 acres of land, northwest of the City of Gainesville in Cooke County, Texas, the former Empire Oil Refinery was owned and operated by Empire Oil Company from approximately 1916 until the 1930s. Empire Oil was a wholly-owned subsidiary of City Service (Cities) and later merged with Cities around 1933. They continued refining activities at the Site until 1935. In 1982, Occidental Petroleum Corporation (OPC) purchased Cities and acquired 95% of Cities assets, with the remaining 5% of Cities assets and associated liabilities being sold to Canadian Occidental Offshore Production Company (COOPCO). Through an indemnity agreement between COOPCO and OPC, OXY USA, a subsidiary of OPC, assumed the liability for the former Empire Oil site even though they were not a title holder to the property.

Remnants of the former refinery, including tank pads and open oil storage pits with an undetermined amount of product and waste material, remained on-site after operations ceased in 1935. In October, 2000, the USFWS in conjunction with other state and federal agencies responded to an anonymous complaint about the site. It was during this complaint investigation that 51 waste-coated dead birds and four dead turtles trapped in the oily wastes were observed within the Northern Pit. Additional wildlife mortalities were observed in the outer ring of the Northern Pit and included: one waste-coated bird, one turtle, and one waste-coated raccoon. Immediately south and adjacent to the outer ring of the Northern Pit, product sheen was observed in Pecan Creek. Con-

tamination was observed in the grassland area immediately adjacent to Pecan Creek and southwest of the Northern Pit. This area appeared to be a series of old tank pads and dikes with visual signs of oily product mixed in the soil. Investigation of the Southern Pit identified seven dead turtles as well as sheens and salt staining of soils and sediments.

On March 21, 2001, OXY USA entered into the TCEQ Voluntary Cleanup Program (VCP, Case No. 1325) to remediate the site, focusing on the Northern Pit first, to reduce the imminent threat to migratory avian species and other wildlife. Emergency remediation of the Northern Pit was completed by December 2001. In conjunction with emergency remedial activities at the site, the Trustees and Oxy Petroleum began discussions regarding impacts to natural resources. In 2003, the Trustees made the initial determination that releases of hazardous substances from the facility into the terrestrial and aquatic habitats associated with the site had occurred. The Trustees also determined that the releases of these hazardous substances posed a direct and indirect threat to natural resources for which the federal and/or state governments may assert trusteeship under the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. sec. 9601 et seq.), the Clean Water Act (33 U.S.C. sec. 1321 et seq.), the Oil Pollution Act (33 U.S.C. 2701 et seq.), and the Texas Hazardous Substances Spill Prevention and Control Act (Water Code, Chapter 26, Subchapter G). The natural resources potentially affected at the site are the various terrestrial and aquatic habitats and the associated services provided by these habitats that have been affected or potentially affected by the contaminants at the Site including but not limited to: surface waters, submerged lands, sediments, wetlands, grassland, upland woods and riparian habitats, migratory avian species (including shore birds, colonial water birds, waterfowl, and raptors), wildlife, fisheries and other aquatic organisms.

To facilitate the assessment and achieve a cost effective resolution of natural resource injuries at the site, the Trustees worked with OXY USA and the TCEQ VCP to develop and review site specific data collection and ecological risk assessment and use this information as part of the injury assessment process. After evaluation it was determined that a minimum of 133 acres of constructed, enhanced or restored habitat would be required to offset all injuries at the site. This would include a minimum of 99.74 acres of wetlands or aquatic habitat, 29.17 acres of upland prairie and 3.55 acres of riparian / bottomland hardwoods.

The overall objective of the restoration planning process is to identify restoration alternatives that are appropriate to restore, rehabilitate, replace or acquire natural resources and their services equivalent to natural resources injured or lost as a result of releases of hazardous substances. These restoration actions make the public whole by providing compensation for injuries and losses to natural resources. Based on a thorough evaluation of potential restoration alternatives, the Trustees have concluded that primary restoration coupled with creation of new habitat is feasible and the most appropriate restoration option for the services injured. Therefore the enhancement and construction of habitat (primary restoration) at and adjacent to the Former Empire Oil Refinery site has been selected as the preferred restoration alternative.

For further information contact: Charles Wood at (512) 389-8755, fax: (512) 389-8160, e-mail: charles.wood@tpwd.state.tx.us.

TRD-200803767

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Filed: July 23, 2008

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Texas Department of Public Safety

Hazardous Materials Emergency Preparedness Grants

INTRODUCTION: The Governor's Division of Emergency Management (GDEM), acting for the State Emergency Response Commission (SERC), is requesting proposals for Local Emergency Planning Committee (LEPC) Hazardous Materials Emergency Preparedness (HMEP) grants to be awarded to Cities/Counties representing LEPCs to further their work in hazardous materials transportation emergency planning.

DESCRIPTION OF ACTIVITIES: LEPCs are mandated by the federal Emergency Planning and Community Right-to-Know Act (EPCRA) to provide planning and information for communities relating to chemicals, in their use, storage or transit. The U.S. Department of Transportation has made grant money available to enhance communities' readiness for responding to hazardous materials transportation incidents. A grant may be used by an LEPC in various ways, depending on a community's needs.

ELIGIBLE APPLICANTS: Each proposal must be developed by an LEPC, the membership of which is recognized by the SERC, in cooperation with county and/or city governments. The proposal must be approved by a vote of the LEPC. Each LEPC shall arrange for a city or county to serve as its fiscal agent for management of any and all money awarded under this grant.

CERTIFICATION: The fiscal agent must provide certification to commit funds for this project. The certification must be in the form of an enabling resolution from the county or authorization to commit funds from the city as appropriate.

BUDGET LIMITATIONS: Total funding for these grants is dependent on the amount granted to the state from the U.S. Department of Transportation. No less than seventy-five percent of the money granted to the state for planning will be awarded to LEPCs. This is the seventeenth of a series of annual grant awards, which will be issued through FY 2009. Grants will be awarded based upon project, population, hazardous materials risk, need, and cost-effectiveness as judged by SERC. GDEM will fund eighty percent of the total project cost. Twenty percent of the project cost must be borne by the grantee. Approved in-kind contributions may be used to satisfy this contribution. LEPCs must maintain the same level of spending for planning as an average of the past two years, in addition to the grant.

EXAMPLES OF PROPOSALS:

- * Development, improvement, and implementation of the emergency plans required under the EPCRA, as well as exercises, which test the emergency plan. Improvement of emergency plans may include hazard analysis as well as response procedures for emergencies involving transportation of hazardous materials including radioactive materials.
- * An assessment to determine flow patterns of hazardous materials within a State, between a State and another State or Indian Country, and development and maintenance of a system to keep such information current.
- * An assessment of the need for regional hazardous materials emergency response teams.
- * An assessment of local response capabilities.
- * Conducting emergency response drills and exercises associated with emergency response plans.
- * Technical staff to support the planning effort. (Staff funding under planning grants cannot be diverted to support other requirements of EPCRA.)
- * Public outreach about hazardous materials training issues such as community protection, chemical emergency preparedness, or response.

* Any other planning project related to the transportation of hazardous materials approved by GDEM.

CONTRACT PERIOD: Grant contracts begin as early as November 1, 2008, and end August 31, 2009.

FINAL SELECTION: The GDEM shall review the proposals. SERC Subcommittee on Planning will make the final selection. The State is under no obligation to award grants to all applicants.

APPLICATION FORMS AND DEADLINE: You can obtain "Request for Proposals and Application Package" by downloading the application from GDEM website (<http://www.txdps.state.tx.us/dem/pages/planning.htm>), you may request a copy by contacting HazMat Preparedness Officer at emdtechhaz@txdps.state.tx.us or by calling at (512) 424-5985. The completed (original and four copies) "Request for Proposals and Application Package" should be sent via certified/registered mail or other private mail delivery service, requiring a signature to the Governor's Division of Emergency Management, Preparedness Section, Technological Hazards Unit, P.O. Box 4087, Austin, Texas 78773-0225 to be received by 5:00 p.m. on September 30, 2008. You can find additional information on the State of Texas eGrants Website www.texasonline.state.tx.us/tolapp/egrants/search.htm. Search for Hazardous Material Emergency Preparedness (HMEP) Planning Grant, or by e-mailing a request for information to emdtechhaz@txdps.state.tx.us.

TRD-200803697

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Filed: July 21, 2008



Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on July 17, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Northland Cable Television, Inc. for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35895 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the City of Wortham, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35895.

TRD-200803753

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 23, 2008



Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on July 16, 2008, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Windjammer Communications, LLC for a State-Issued Certificate of Franchise Authority, Project Number 35886 before the Public Utility Commission of Texas.

The requested CFA service area includes the City of Benders, the County of Benders serving the unincorporated area of Benders, Texas, County of Benders serving the unincorporated area of Lake Hills, Texas, City of Cooper, City of EnCana, City of Freer, City of Graham, County of Young serving the unincorporated area of Graham, Texas, City of Jourdanton, City of Poteet, County of Anderson serving the unincorporated area of Palestine, Texas, City of Elkhart, City of Stockdale, County of Webb serving the unincorporated area of Bruin, Texas, County of Webb serving the unincorporated area of Miranda, Texas, County of Webb serving the unincorporated area of Oilton, Texas, County of Jim Hogg serving the unincorporated area of Hebbronville, Texas, and the County of Clay serving the unincorporated area of Lake Arrowhead, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35886.

TRD-200803750

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 23, 2008



Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On July 18, 2008, Stratos Offshore Services Company filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60191. Applicant intends to reflect a change in ownership/control as the result of corporate restructuring.

The Application: Application of Stratos Offshore Services Company for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 35896.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 6, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35896.

TRD-200803752

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 23, 2008

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas on July 15, 2008, pursuant to the Public Utility Regulatory Act, Texas Utility Code annotated §14.101 and §37.154 (Vernon 2007 and Supp. 2007) (PURA).

Docket Style and Number: Joint Application of Big Country Electric Cooperative, Inc. and Golden Spread Electric Cooperative, Inc. to Transfer Certificate Rights, Docket Number 35884.

The Application: This transaction involves the approval of the sale of transmission facilities and associated certificate of convenience and necessity rights from Big Country Electric Cooperative, Inc. (Big Country) to Golden Spread Electric Cooperative, Inc. (Golden Spread). Specifically, Big Country, one of Golden Spread's member distribution cooperatives and a full requirements wholesale power customer of Golden Spread, has agreed to sell all of its transmission facilities located inside and outside of the Electric Reliability Council of Texas in Fisher, Garza, Haskell, Jones, Scurry, and Shackelford Counties to Golden Spread. The Big Country facilities are valued at \$4,395,603 and generally consist of 69 miles of 69-kV transmission line and associated high-side substation facilities and related SCADA equipment. In conjunction with this sale, Golden Spread will assume certain of Big Country's notes that are secured by its facilities. The purpose of the transaction is to lower Big Country's costs. Under its existing financing arrangements with the National Rural Electric Cooperative Financing Corporation (CFC), Big Country must establish rates that maintain a "debt service coverage" ratio of 1.35. However, as a generation and transmission cooperative, Golden Spread is eligible to enter into a new mortgage with CFC that requires a debt service coverage of 1.00. The lower debt service coverage requirement reduces the level of the rates necessary to meet the mortgage terms.

Big Country's operations and maintenance (O&M) expenses will not change because Big Country will continue to operate and maintain the facilities and will be compensated by Golden Spread for the cost of these services. The financing costs and the O&M expenses will be passed on to Big Country through Golden Spread's wholesale rates. Therefore, while Big Country's wholesale rates will increase, its overall cost of service will decline because the effective cost of capital will be lower and its operational expenses will not change.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at 1-800-735-2989. All correspondence should refer to Docket Number 35884.

TRD-200803668
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 18, 2008

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas on July 18, 2008, pursuant to the Public Utility Regulatory Act, Texas Utility

Code Annotated, §14.101 and §37.154 (Vernon 2007 & Supplement 2007) (PURA).

Docket Style and Number: Joint Application of Concho Valley Electric Cooperative, Inc. and Golden Spread Electric Cooperative, Inc. to Transfer Certificate Rights, Docket Number 35900.

The Application: This transaction involves the approval of the sale of a portion of transmission facilities and associated certificate of convenience and necessity rights from Concho Valley Electric Cooperative, Inc. (Concho Valley) to Golden Spread Electric Cooperative, Inc. (Golden Spread). Specifically, Concho Valley, one of Golden Spread's member distribution cooperatives and a full requirements wholesale power customer of Golden Spread, has agreed to sell a portion of its transmission facilities located inside the Electric Reliability Council of Texas in Coke, Irion, Sterling, and Tom Green Counties to Golden Spread. The Concho Valley facilities are valued at approximately \$2.48 million and generally consist of approximately 35 miles of high-voltage transmission line, high-side substation facilities, and associated SCADA equipment. In conjunction with this sale, Golden Spread will assume certain of Concho Valley's notes that are secured by its facilities. The purpose of the transaction is to lower Concho Valley's costs. Under its existing financing arrangements with the National Rural Electric Cooperative Financing Corporation (CFC), Concho Valley must establish rates that maintain a "debt service coverage" ratio of 1.35. However, as a generation and transmission cooperative, Golden Spread is eligible to enter into a new mortgage with CFC that requires a DSC of 1.00. The lower DSC requirement reduces the level of the rates necessary to meet the mortgage terms.

Concho Valley's operations and maintenance (O&M) expenses will not change because Concho Valley will continue to operate and maintain the facilities and will be compensated by Golden Spread for the cost of these services. The financing costs and the O&M expenses will be passed on to Concho Valley through Golden Spread's wholesale rates. Therefore, while Concho Valley's wholesale rates will increase, its overall cost of service will decline because the effective cost of capital will be lower and its operational expenses will not change.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 35900.

TRD-200803751
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 23, 2008

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Notice of Workshop and Request for Comments on Strawman Rule for Establishing Telecommunications Service Quality Standards for Alternate Technologies used by a Provider of Last Resort

The staff of the Public Utility Commission of Texas (commission) will hold a workshop on Wednesday, August 20, 2008, at 9:30 a.m. in Hearing Room Gee, 7th floor, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 to seek input on the strawman draft of new substantive rule §26.57 relating to establishing service quality standards for alternate technologies used by a holder of a certificate of

convenience and necessity or certificate of operating authority to meet its provider of last resort obligations under Public Utility Regulatory Act §54.251(c). Project Number 31958, *PUC Rulemaking Project for Establishing Telecommunications Service Quality Standards for Alternate Technologies Used by a POLR*, has been established for this proceeding.

The commission staff requests that interested persons file comments and answer questions related to the strawman. The strawman, along with specific questions, is available on the project's website at <http://www.puc.state.tx.us/rules/rulemake/31958/31958.cfm> or on the commission's interchange filing system under Project Number 31958. Comments may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, no later than Friday, August 15, 2008. All comments should reference Project Number 31958.

This notice is not a formal notice of proposed rulemaking; however, comments will assist the commission in developing a proposed rule.

Persons wishing to make presentations at the workshop should register by phone with Nara Srinivasa at (512) 936-7335 or by e-mail at nara.srinivasa@puc.state.tx.us by Wednesday, August 13, 2008.

Questions concerning this project should be referred to Nara Srinivasa, Infrastructure and Reliability Division, (512) 936-7335, or Susan Goodson, Attorney, Legal Division, (512) 936-7292. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200803679
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 18, 2008



Public Notice of CCN Holders Filing Requirements in Order to Calculate the Weighted Statewide Average Composite Usage Sensitive Intrastate Switched Access Rates

The Public Utility Commission of Texas (commission) is required to recalculate the weighted statewide average composite usage sensitive intrastate switched access rates pursuant to P.U.C. Substantive Rule §26.223. In order to calculate the statewide average, Certificate of Convenience and Necessity (CCN) holders are required to submit updated intrastate switched access data. Therefore, all CCN holders must provide the following intrastate data to the commission as a compliance filing pursuant to P.U.C. Substantive Rule §26.223(g) by Monday, September 15, 2008:

- (1) The current tariffed rate for originating and terminating common carrier line (CCL);
- (2) The current tariffed rate for originating and terminating local switching (LS);
- (3) The current tariffed rate for originating and terminating transport (TR);
- (4) The current tariffed rate for originating and terminating tandem switching (TS);
- (5) The current average per minute rate for originating and terminating tandem switch transport (TST);
- (6) The current originating and terminating tariffed rate(s) for any other usage sensitive intrastate switched access rate element(s);

(7) The total actual originating and terminating minutes of use (MOUs) for the most recent 12-month period (August 1 through July 31) for each rate element in (1) - (6) listed above that is billed on an MOU basis; and

(8) The total revenues for the most recent 12-month period (August 1 through July 31) received from any switched access monthly rate element used to transport or switch the access traffic listed in (1) - (6) above that may be specifically attributable to the element identified (e.g., local switching, transport).

CCN holders' compliance filings should be filed in Project Number 35882 no later than 3:00 p.m., Monday, September 15, 2008.

Questions concerning this notice should be referred to John Costello, Senior Rate Analyst, Rate Regulation Division at (512) 936-7377, or Stephen Mendoza, Rate Analyst, Rate Regulation Division at (512) 936-7394. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200803667
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 18, 2008



Public Notice of Workshop on Retail Electric Provider Certification and Request for Comments

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding retail electric provider selection, on Friday, August 15, 2008, at 9:30 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 35767, *Rule-making Relating to the Certification of Retail Electric Providers* has been established for this proceeding.

Prior to the workshop, the commission requests that interested persons file responses to the following questions from the perspective of improving the quality of Retail Electric Providers (REPs) participating in the market, improving the quality of information available to assess the financial health of REPs participating in the market, and protecting customer deposits and Transmission and Distribution Utility (TDU) financial integrity:

1. Should the financial qualifications for REPs require cash-like assets that can be readily applied to the REP's obligations to refund customer deposits and advance payments and obligations to TDUs, such as posting Letters Of Credit (LOC) or obtaining surety bonds? Should creditworthy REPs (investment-grade) be exempt from any LOC or surety bond requirements, and allowed to continue to maintain customer deposits in restricted cash accounts?
2. The commission has drawn funds from a LOC through the contested-case process. In one case, it took approximately six months to draw on the LOC and return deposits to customers. By comparison, ERCOT has the ability to draw on an LOC and distribute the funds to damaged parties in a matter of days. How could the commission expedite a draw of funds from an LOC? Is additional authority required for the commission to draw funds from a LOC immediately?
3. Are there mechanisms or instruments other than LOCs and surety bonds that provide at least the same level of security as an LOC or surety bond? If so, please identify and describe the mechanism or instrument and how the commission can use it to protect customer deposits.

4. (a) Should TDUs be given greater latitude in managing REP credit risks, such as by allowing them to collect deposits from REPs? If so, should the TDUs' latitude to manage REP credit risk be limited in any way? If a REP is unable to pay a TDU, under current business processes, the TDU can be exposed to providing approximately 85 days of unpaid service. How much of this exposure should the TDU be allowed to mitigate? Should creditworthy REPs be exempt from TDU deposit requirements? Should TDUs offer unsecured credit based on payment history?

(b) Alternatively, should the financial requirements of REPs be modified to so that TDUs are better protected from REP credit risks?

5. Should the billing cycle in the standard delivery tariff be shortened to limit exposure? If so, should REPs be permitted to use shorter billing cycles?

6. Based on your market experience, what is the appropriate minimum capital required for the initial start-up operation of a REP? The response should consider initial and near term liquidity needs for the purchase of wholesale electricity, collateral requirements, computer software and infrastructure, personnel, contract services, commodity risk management, marketing, and legal expenses. The response may include one scenario or a range of scenarios based on different market conditions, and should be supported with data where possible.

7. Should the financial standards for REP certification be divided into tiers, such that the creditworthiness of each REP and applicant is categorized into successive tiers of qualification with higher financial requirements for companies with higher levels of exposure to market risks? Should such a tier system employ incentives for lower tier REPs to apply for and obtain higher tier status (or qualify for an automatic upgrade based on a periodic review) when warranted? Should exposure limits (load limits, customer deposit restrictions, etc.) be imposed on lower tier REPs?

8. Should the revised rule incorporate limits on changes in exposure to market risks (load growth, restrictions on the offering of fixed price contracts to customers, or other restrictions designed to mitigate exposure to risk)? What requirements, including timing, should the rule set for updating financial qualifications consistent with growth in customer deposits and prepayments?

9. Should there be separate financial standards for pre-pay REPs?

10. Should the commission consider key elements of a REP applicant's business plan, such as power acquisition, risk management, and retail pricing, in evaluating the financial requirements in an application for certification?

11. Should REPs be required to submit quarterly financial reports? Should REPs be required to submit quarterly reports on power acquisition, risk management and their current retail contracts?

12. Should the commission disqualify owners, principals, and Board members of a company that has defaulted with ERCOT or a TDU or whose customers have been transferred in a mass transition from being an owner, principal, or Board member of another REP?

13. Should the technical requirements for REP certification be modified? What standards are appropriate?

14. Should the standards and procedures for certificate amendments and/or transfers be modified? If so, how?

15. Does the commission have the ability to prescribe by rule conditions that would result in automatic suspensions or revocations of REP certificates? If so, should the rule allow for automatic suspensions or revocations of REP certificates? Under what circumstances would an automatic suspension or revocation be appropriate? What

process should the commission use to confirm automatic suspensions or revocations?

16. If the commission adopts more stringent certification requirements, should it grandfather existing REPs for a limited period, to permit them to demonstrate that they are in compliance with the new standards?

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 by 3:00 p.m. on Tuesday, August 12, 2008. All responses should reference Project Number 35767.

Questions concerning the workshop or this notice should be referred to Shawnee Claiborn-Pinto, Sr. Retail Market Analyst, at (512) 936-7388. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200803768

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 23, 2008

Stephen F. Austin State University

Notice of Consultant Contract Amendment

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of consultant contract amendment. The original Master Software License, Services and Maintenance Agreement is between The State of Texas, acting by and through the Department of Information Resources, and SunGard SCT, Inc., as amended between SunGard SCT, Inc and the State of Texas, administered by Texas A&M University - Corpus Christi, for and on behalf of the Texas Connection Consortium. The original contract was executed in 2002 and amended by a Work Order for services to Stephen F. Austin State University, a member institution, on September 10, 2004. The first amendment was published in the December 28, 2007, issue of the *Texas Register* (32 TexReg 10113). The total sum of the services for the University is estimated to be \$1,567,279 for the period through August 31, 2011. The contract is being amended in the amount of \$932,800 for additional consulting and services relative to the major software conversion within the Institution due to a required upgrade.

Vendor contact for the contract is Walt Glass, Account Manager, SunGard Higher Education, 3211 Internet Blvd., Ste. 230, Frisco, Texas 75034, Tel (469) 675-0129, Fax (610) 578-3129.

Documents, films, recording, or reports of intangible results will not be presented by the outside consultant.

For further information, please contact Paul Davis, Director of Information Technology Services, P.O. Box 13012, Nacogdoches, Texas 75962, Tel (936) 468-1110.

TRD-200803656

R. Yvette Clark

General Counsel

Stephen F. Austin State University

Filed: July 17, 2008

Texas Department of Transportation

Notice: Record of Decision

A Record of Decision (ROD) has been issued for the Final Environmental Impact Statement (FEIS) for Grand Parkway (State Highway 99) Segment E from Interstate Highway 10 (I-10) to United States Highway 290 (US 290) Harris County, Texas. Segment E, as proposed, is a four-lane controlled access toll road with intermittent frontage roads from Franz Road (near I-10) to US 290 (Northwest Freeway) through Harris County, a distance of approximately 13.9 miles.

The ROD is available for viewing or copying at the Grand Parkway Association website, www.grandpkwy.com; at the Texas Department of Transportation's Houston District Office, located at 7600 Washington Avenue, Houston, Texas or at the offices of the Grand Parkway Association, located at 4544 Post Oak Place, Suite 222, Houston, Texas. For further information on Segment E, please contact David Gornet, P.E. at (713) 965-0871 or Pat Henry, P.E. at (713) 802-5241.

TRD-200803740

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 22, 2008



Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and 43 Texas Administrative Code §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

www.txdot.gov/about_us/public_hearings_and_meetings/aviation.htm

Or visit **www.txdot.gov**, click on Citizen, click on Public Hearings, and then click on Aviation.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-200803741

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 22, 2008



University of Houston

Consultant Contract Award Notice

In compliance with the provision of Chapter 2254, Subchapter B, Texas Government Code, The University of Houston furnishes this notice of consultant contract award. The consultant will provide advice and consultation in providing a financial feasibility study in constructing a major addition to its athletic football stadium. Requests for proposals were filed in the May 23, 2008, issue of the *Texas Register* (33 TexReg 4253).

The contract was awarded to Conventions, Sports & Leisure International, 5741 Legacy Drive, Suite 310, Plano, Texas 75024, for a total amount of \$97,500.

The beginning date of the contract is July 7, 2008 and the ending date is August 29, 2008.

For further information, please call (832) 842-8750.

TRD-200803654

Brian S. Nelson
Associate General Counsel/Executive Director
University of Houston
Filed: July 17, 2008



The University of Texas System

Notice of Intent to Seek Consultant Services

The University of Texas Health Science Center at Houston

In accordance with the provisions of *Texas Government Code*, Chapter 2254, the University of Texas Health Science Center at Houston will be seeking Invitation for Offers to hire a consultant to provide a development of branding and marketing initiative.

The President of the University of Texas Health Science Center at Houston has made a finding of fact that the consulting services are necessary. The University of Texas Health Science Center at Houston does not currently have the in-house expertise to complete this project.

An award will be made to the proposer that submits the highest ranked proposal based on evaluation criteria developed by the University.

Parties interested in a copy of the Invitation for Offers should contact:

Laura Wong, C.T.P.

Purchasing Contracts Administrator

Procurement Services

The University of Texas Health Science Center at Houston

1851 Crosspoint, OCB 1.160

Houston, Texas 77054

Voice: (713) 500-8056

E-mail: laura.wong@uth.tmc.edu

The proposal submission deadline will be Thursday, August 21, 2008 at 2:00 p.m. Central Prevailing Time.

TRD-200803749

Francie A. Frederick
General Counsel to the Board of Regents
The University of Texas System
Filed: July 23, 2008



How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).